

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT, AND
STATE OF IOWA,

Plaintiffs,

v.

MCWANE, INC.,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiffs, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), the Alabama Department of Environmental Management ("ADEM"), an agency of the State of Alabama authorized to file suit in the name of the state to enforce both state and federally enforceable environmental protection statutes, regulations and permits issued by ADEM, through the undersigned attorneys, and the State of Iowa, by the authority of the Attorney General of Iowa and through the undersigned attorneys, file this complaint against McWane, Inc. (hereafter "McWane" or "Defendant") and allege as follows.

NATURE OF ACTION

1. Plaintiffs bring this action under the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.; the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.; the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11001 et seq.; the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f et seq.; and the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq. to obtain injunctive relief and civil penalties for violations of each of these statutes, as well as their implementing permits and regulations.

2. This civil action relates to violations of the CAA, CWA, RCRA, EPCRA, CERCLA, SDWA, and TSCA at twenty-eight (28) facilities owned and operated by McWane, and located in: Anniston, Alabama; Birmingham, Alabama; Calhoun County, Alabama; Holt, Alabama; Sipsy, Alabama; Trussville, Alabama; Corona, California; Quincy, Illinois; Bedford, Indiana; Elkhart, Indiana; Oskaloosa, Iowa; Hannibal, Missouri; Marshfield, Missouri; Phillipsburg, New Jersey; Scotch Plains, New Jersey; Elmira, New York; Coshocton, Ohio; Macungie, Pennsylvania; Crossville, Tennessee; Lubbock, Texas; Tyler, Texas; Provo, Utah; and Petersburg, Virginia. The subject facilities manufacture pipes, valves, fire hydrants, and fittings.

3. The claims in this complaint, for ease of pleading, are primarily alleged using the applicable federal citations.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Sections 301, 309, and 402 of the CWA, 33 U.S.C. §§ 1311, 1319, and 1342; Section 3008 of RCRA, 42 U.S.C. § 6928; Section 113 of CERCLA, 42 U.S.C. § 9613; Sections 304, 313, and 325 of EPCRA, 42 U.S.C. §§ 11004, 11023, and 11025; Section 1414 of SDWA, 42 U.S.C. § 300g; and Section 17 of TSCA, 15 U.S.C. § 2616.

5. The Northern District of Alabama is an appropriate choice of venue in this action pursuant to 28 U.S.C. §§ 1391(b) and (c), because McWane conducts business at a location in this district, which is also its corporate headquarters, and because some of the events giving rise to the claims alleged in this complaint occurred in this district. This venue is consistent with Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 309(b) of the CWA, 33 U.S.C. § 1319(b); Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 113(b) of CERCLA, 42 U.S.C. § 9613(b); Section 325 of EPCRA, 42 U.S.C. § 11045; Section 1414 of SDWA, 42 U.S.C. § 300g; and Section 17 of TSCA, 15 U.S.C. § 2616.

6. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516, 519, Section 305 of the CAA, 42 U.S.C. § 7605; Section 309 of the CWA, 33 U.S.C. § 1319; Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); Section 113 of CERCLA, 42 U.S.C. § 9613; Section 325 of EPCRA, 42 U.S.C. § 11045; Section 1414 of SDWA, 42 U.S.C. § 300g; and Section 17 of TSCA, 15 U.S.C. § 2616.

7. ADEM is an agency of the state of Alabama authorized to file suit in the name of the state to enforce state environmental protection statutes, regulation, and permits issued by ADEM. Ala. Code § 22-22A-5(12) (2006) Rplc. Vol.. Joinder is authorized under the Federal

Rules of Civil Procedure 19 and 20. The state is also authorized to sue to enforce the CAA pursuant to its citizen suit provisions, 42 U.S.C. §§ 7604 and 7602.

8. The State of Iowa institutes this action pursuant to Iowa Code sections 455B.112, 455B.146, and 455B.191. The Iowa Attorney General is authorized to appear and represent the State in this action pursuant to Iowa Code section 455B.112.

NOTICE

9. Notice of the commencement of this action has been given to the states of Alabama, California, Illinois, Indiana, Iowa, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah, and Virginia, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 309(b) of the CWA, 33 U.S.C. § 1319(b), Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

DEFENDANT

10. Defendant McWane is a corporation organized and existing under the laws of the state of Delaware, with corporate headquarters in Birmingham, Alabama, and is authorized to do business in the state of Alabama.

11. McWane's primary products include cast iron pipe, valves, fittings, fire hydrants, propane and compressed air tanks, and other similar products, which are marketed mainly in the United States to distributors, wholesalers, and retailers who produce pipes.

12. At all times relevant to this action, McWane has owned and/or operated facilities located in Alabama, California, Illinois, Indiana, Iowa, Missouri, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah, and Virginia, as follows:

<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>ZIP</u>
Amerex	2120 Lamberts Mill Road	Scotch Plains	NJ	07076

Atlantic States	183 Sitgreaves Street	Phillipsburg	NJ	08865
Kennedy Valve	1021 East Water Street	Elmira	NY	14901
Tyler Pipe	101 North Church Street	Macungie	PA	18062
Manchester Tank	23209 Airpark Drive	Petersburg	VA	23803
Amerex	7595 Gadsden Hwy	Trussville	AL	35173
Dilworth Mine	4377 Hull Road	Empire	AL	35063
Dilworth Washer	4377 Hull Road	Empire	AL	35063
Empire Coke	3200 Main Street, NE	Holt	AL	35404
Empire Coke	3200 Main Street, NE	Tuscaloosa	AL	35404
M&H Valve	605 West 23rd Street	Anniston	AL	36201
M&H Valve Landfill	1251 Parkwood Drive	Anniston	AL	36201
Rice Chapel Mine	Campbellville Road	Empire	AL	35063
Sipsey Mine	Slosey Road	Empire	AL	35063
Union Foundry	1501 West 17th Street	Anniston	AL	36202
Manchester Tank	1383 Industrial Blvd.	Crossville	TN	38555
Manchester Tank	3400 Wismann Lane	Quincy	IL	62301
Manchester Tank	905 X Street	Bedford	IN	47421
Manchester Tank	3630 Manchester Drive	Elkhart	IN	46514
Clow Water	2266 South 6th Street	Coshocton	OH	43812
Manchester Tank	1201 North Gary Avenue	Lubbock	TX	79415
Tyler Pipe	11910 County Road 492	Tyler	TX	75706
Clow Valve	902 South Second Street	Oskaloosa	IA	52577
Manchester Tank	3752 Warren Barrett Dr.	Hannibal	MO	63401

Tyler Pipe/ Tyler Coupling	675 Tyler Avenue	Marshfield	MO	65706
Pacific States	2550 South Industrial Parkway	Provo	UT	84606
Anaco	1001 El Camino Ave	Corona	CA	92879
Clow Valve	1375 Magnolia Ave.	Corona	CA	92879

13. At all times relevant to this action, Defendant McWane's facilities operated under SIC Code 3321 (gray iron foundries)(foundry), SIC Code 3366 (copper foundries)(foundry), SIC Code 3492 (industrial value manufacturing - fluid power valves and hose fittings)(machine shop), SIC Code 3498 (fabricated pipe and pipe fittings), and SIC Code 3499 (fabricated metal products, not elsewhere classified), within the meaning of Section 402(p) of the CWA, and 40 C.F.R. §§ 122.1 and 122.26.

14. At all times relevant to this action, McWane's operations at Clow Valve Company in Oskaloosa, Iowa, at Manchester Tank Company in Quincy, Illinois, at Manchester Tank Company in Elkhart, Indiana, and at Manchester Tank Company in Bedford, Indiana, were each a "facility," as that term is defined by Section 329 of EPCRA, 42 U.S.C. § 11049.

15. At all times relevant to this action, Clow Water System Company's facility in Coshocton, Ohio has been a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Defendant's facilities are "solid waste management facilities" within the meaning of Section 1004(29) of RCRA, 42 U.S.C. § 6903(29).

17. Defendant is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e); Sections 311(a)(7) and 502(5) of the Clean Water Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5); Section 1004(15) of RCRA, 42 U.S.C. § 6903(15); Section 101(21)

of CERCLA, 42 U.S.C. § 9601(21); Section 1401(4)(C)(12) of SDWA, 42 U.S.C.

§ 300f(4)(C)(12); and Section 3 of TSCA, 15 U.S.C. § 2602(11).

DESCRIPTION OF THE AMEREX CORPORATION FACILITIES

18. The Amerex Corporation facility located in Trussville, Alabama, manufactures hand-held portable and wheeled extinguishers for commercial and industrial applications.

In 1999, James Manufacturing, a subsidiary of McWane, Inc., acquired Amerex Corporation.

19. The Amerex Corporation facility located in Scotch Plains, New Jersey, manufactured hand portable and wheeled extinguishers for commercial and industrial applications. This facility produced screw machine products and fabricated metal products as well. In 1999, James Manufacturing, a subsidiary of McWane, Inc., acquired Amerex Corporation. This facility closed in August 2003.

DESCRIPTION OF THE ANACO FACILITY

20. The Anaco facility, located in Corona, California, manufactures completed stainless steel couplings, including manufacture of stainless steel screws, clamps and gaskets.

DESCRIPTION OF THE ATLANTIC STATES FACILITY

21. The Atlantic States Cast Iron Pipe Company facility, located in Phillipsburg, New Jersey, manufactures ductile iron pipe.

DESCRIPTION OF THE CLOW VALVE COMPANY FACILITIES

22. The Clow Valve Company facility located in Corona, California, manufactures and assembles wet barrel fire hydrants.

23. The Clow Valve Company facility located in Oskaloosa, Iowa, operates two manufacturing facilities: Plant 1, a machine shop and office complex; and Plant 2, a gray iron, ductile iron, and brass foundry. Clow Valve primarily manufactures fire hydrants and large water

control valves for potable water and wastewater pipelines. The facilities were purchased by McWane in 1985.

24. Clow Valve operated a landfill, known as the Mitrison Disposal Site, on property outside of Oskaloosa that was leased from a farmer. Clow submitted a RCRA Part A permit application for the landfill on November 19, 1980, and the landfill was assigned a RCRA hazardous waste disposal facility number. Clow used the landfill for disposal of general refuse and foundry wastes, such as foundry sand, baghouse dust, grinding room waste, and arc melt dust, through March, 1982. The unlined landfill was capped with clay soils and topsoil under a closure plan approved by the Iowa Department of Natural Resources ("IDNR") on June 21, 1985. The landfill is currently in the post-closure care period.

DESCRIPTION OF THE CLOW WATER COMPANY FACILITY

25. The Clow Water Systems Company facility, located in Coshocton, Ohio, is a foundry that produces cast iron pipe, and operates a cupola furnace which was installed prior to 1972 to generate molten iron at its facility in Coshocton, Ohio. It was purchased by McWane in 1985.

DESCRIPTION OF THE EMPIRE COKE COMPANY FACILITY

26. The Empire Coke Company facility, located in Holt, Alabama, was a coal processing facility. This facility processed coal to produce metallurgical coke and other byproducts, such as coal tar and light oil. In 1962, McWane, Inc. acquired Empire Coke Company. This facility closed on June 30, 2004.

DESCRIPTION OF THE KENNEDY VALVE COMPANY FACILITY

27. The Kennedy Valve facility, located in Elmira, New York, is a foundry that manufactures hydrants and valves for waterworks distribution, potable and wastewater treatment,

and fire protection systems. It uses sand molds, including chemically bound sand cores, and uses electric furnaces to melt scrap gray and ductile iron and does not have a cupola. McWane acquired Kennedy Valve in 1988.

DESCRIPTION OF THE M & H VALVE COMPANY FACILITIES

28. The M & H Valve Company facility located in Anniston, Alabama, manufactures gray and ductile valves and fire hydrants. The facility utilizes electric furnaces to melt scrap metals to raw material. In 1984, McWane, Inc. acquired the M & H Valve Company.

29. The M & H Valve Company also operates a landfill, located in Calhoun County, Alabama, a few miles away from the manufacturing facility in Anniston, Alabama.

DESCRIPTION OF THE MANCHESTER TANK COMPANY FACILITIES

30. The Manchester Tank & Equipment Company facility located in Bedford, Indiana, manufactures low pressure tanks for propane, air, refrigerant and industrial applications. In 1999, McWane acquired Manchester Tank Company.

31. The Manchester Tank Company facility located in Crossville, Tennessee, manufactures low pressure tanks for propane, air, refrigerant and industrial applications. In 1999, McWane acquired Manchester Tank Company.

32. The Manchester Tank & Equipment Company facility, located in Elkhart, Indiana, manufactures low pressure tanks for propane, air, refrigerant and industrial applications. In 1999, McWane acquired Manchester Tank Company.

33. The Manchester Tank Company facility located in Hannibal, Missouri, manufactured low pressure tanks for propane, air, refrigerant and industrial applications. In 1999, McWane acquired Manchester Tank Company. This facility closed in February 2002.

34. The Manchester Tank Company facility located in Lubbock, Texas, manufactured low pressure tanks for propane, air, refrigerant and industrial applications. In 1999, McWane acquired Manchester Tank Company. This facility closed on October 26, 2004.

35. The Manchester Tank Company facility located in Petersburg, Virginia, manufactured low pressure tanks for propane, air, refrigerant and industrial applications. In 1999, McWane acquired Manchester Tank Company. This facility closed on June 5, 2009.

36. The Manchester Tank & Equipment Company facility located in Quincy, Illinois, operates powder lines and gas-fired ovens.

DESCRIPTION OF THE PACIFIC STATES CAST IRON PIPE COMPANY FACILITY

37. The Pacific States Pipe Company facility, located in Provo, Utah, manufactures ductile iron pipe. In 1926, McWane Pipe Company established Pacific States Pipe Company as its western operating subsidiary.

DESCRIPTION OF THE TYLER PIPE COMPANY FACILITIES

38. The Tyler Pipe Company facility located in Marshfield, Missouri, manufactures pipe fittings, valves, and couplings. Tyler Pipe Company acquired this facility in 1986 for No-Hub couplings. In 1995, McWane, Inc. acquired Tyler Pipe Company.

39. The Tyler Pipe Company facility located in Macungie, Pennsylvania, operated a cast iron foundry which manufactured cast iron water pipe and sewer pipe until the facility closed its manufacturing operations in April 2006.

40. The Tyler Pipe Company facility located in Tyler, Texas, is a gray iron foundry and manufactures secondary metals. In 1995, the facility was acquired by Ransom Industries, Inc., which was later merged into Ransom Industries, L.P. ("Ransom"). Ransom was owned by McWane, Inc. As of June 30, 2004, Ransom was absorbed into McWane, Inc.

DESCRIPTION OF THE UNION FOUNDRY COMPANY FACILITY

41. The Union Foundry facility, located in Anniston, Alabama, manufactures ductile iron pipe and utility fittings. In 1977, McWane, Inc. acquired the Union Foundry Company.

DESCRIPTION OF MCWANE'S MINES AND DISPOSAL SITES

42. Dilworth Mine, located in Sipsey, Alabama, is a surface mining facility for bituminous coal and lignite. The facility is inactive.

43. Dilworth Washer, located in Sipsey, Alabama, is a surface mining facility for bituminous coal and lignite.

44. Rice Chapel Mine, located in Sipsey, Alabama, is a surface mining facility for bituminous coal and lignite. The facility is inactive.

45. Sipsey Mine, located in Warrior, Alabama, is a surface mining facility for bituminous coal and lignite.

DEFENDANT'S FACILITIES' CWA PERMITS

46. At all times relevant to this action, Defendant McWane's facilities held NPDES permits which established effluent limitations, as well as monitoring and reporting requirements from the facilities.

47. Amerex Corporation's Trussville, Alabama, facility currently has two active and effective Permits. One is the SID permit No. IU 36-37-00055 and the other is the national pollutant discharge elimination system ("NPDES") General Permit No. ALG120187. The old SID permit became effective on March 1, 1999 and expired on February 29, 2004, and a subsequent permit was issued on January 30, 2004, became effective on March 1, 2004, and expired on February 28, 2009. Amerex sent in a renewal application on August 27, 2008, and was issued a draft permit from ADEM on September 15, 2009. Currently, Amerex is operating

under its expired 2004 permit until ADEM finalizes the new permit. The 2004 permit had one outfall designated as DSN001s, with seasonal limits which authorize the permittee to introduce industrial wastes into the local publicly owned treatment works ("POTW"), the Trussville Wastewater Treatment plant. The current/reissued SID Permit No. IU 36-37-00055 became effective as of March 1, 2004, contains two outfalls through which industrial wastes are authorized to be introduced into the aforementioned POTW. Under the terms and conditions of the permit, the permittee is authorized to discharge pre-treated process wastewater from metal finishing operations, floor cleaning, and hydrotesting from outfall- DSN001, while non-contact cooling water and contact wastewater from the powder vacuum pump is authorized to be discharged from outfall- DSN002. The wastewater generated from these activities is treated using chemical precipitation (base, acid, and base - a three stage process), polymer addition, sedimentation, filtration, flow equalization, grease and oil separation (skimmer), and neutralization process (pH adjustment or correction) prior to being discharged on a continuous basis into the POTW. The General Stormwater Permit No. ALG120187 covers runoff from approximately 21 acres and contains 11 outfalls. Potential material exposed to storm water includes scrap metal and raw material found in the area near the railroad track for unloading box cars. In addition, the permit also allows the discharge of noncontact cooling water, hydrostatic test water from new containers, and discharges associated with the exterior washing of vehicles and other equipment. The general permit was issued on October 1, 2002, with the receiving waters being which authorized discharge to an unnamed tributary which leads to the Little Cahaba River. The permit was reissued on May 2, 2007, became effective on October 1, 2007, and will expire on September 30, 2012.

48. The Anaco, Corona, CA, facility is covered by the NPDES General Permit (Permit No. CAS 000001).

49. The Clow Valve Company, Corona, CA, facility is covered by the NPDES General Permit (Permit No. CAS 000001).

50. From 1991 to 1998, the Clow Valve Company, Oskaloosa, Iowa facility's foundry was regulated by both General Permit No. 1 for storm water discharges and an NPDES permit for process wastewater discharges. In 1998, Clow Valve requested that IDNR terminate the General Permit No. 1 coverage. In 1998, IDNR reissued a state individual permit for discharge of the foundry area wastewaters and plant-wide storm water runoff to a small unnamed creek, that is a tributary to the South Skunk River. The permit took effect on December 16, 1998 and expired on December 15, 2003. Clow Valve submitted its permit renewal on June 18, 2003, which has not yet been approved by IDNR, thus leaving the old permit in effect. Between 1991 and 2000, the machine shop was regulated by both General Permit No. 1 for storm water discharges and an NPDES permit for process water. In 1998, IDNR issued to Clow Valve NPDES Permit Number IA0001457 (IDNR Number 62-73-100) for discharge of the machine shop wastewaters to Muchakinhook Creek, a tributary to the Des Moines River, via the city's storm sewers. This permit became effective on January 6, 1998, and was to remain in effect until January 5, 2003; however, on June 23, 2000, Clow Valve notified IDNR that due to changes in their operations at the machine shop, they no longer discharged process waters to the storm sewers, and therefore, requested that the permit be terminated. The machine shop currently has an NPDES permit for the discharge of stormwater that expires on October 1, 2012.

51. Clow Water Systems Company, Coshocton, Ohio facility was issued NPDES

Permit No. 0IS00017*DD on March 11, 2003 by Ohio Environmental Protection Agency ("OEPA") for its facility. The facility's current permit No. OH0094455 was issued on December 8, 2008, became effective on January 1, 2009, and will expire on December 31, 2013.

52. Empire Coke Company, Holt, Alabama facility currently operates under an individual NPDES Permit No. AL0001767. The permit became effective on December 1, 1999, and expired on November 30, 2004. The expired permit remains in full force and effect until a new permit is reissued, since the company submitted a timely application for permit renewal. The permit authorized the discharge of process wastewater from coke making operations at outfall 001, storm water discharge associated with coke making operations at outfall 002, storm water from coke making operations including impounded storm water from coal and coke pile storage piles at outfall 003, and pumped impounded storm water from these coal and coke piles at outfall 003a. These four outfalls discharge to Black Warrior Creek, which is classified as a Fish and Wildlife stream. Also, the facility has a pretreatment permit to discharge industrial waste from the coke making operation to the Hilliard N. Fletcher Wastewater Treatment Plant, a POTW in the City of Tuscaloosa. The nature of the discharge is classified as SID. ADEM issued the SID permit on February 20, 2001 which became effective on June 1, 2001 and expired on May 30, 2006. There are six wastestreams to the pretreatment system. The treatment system consists of oil separator, aeration lagoon, clarifier, polishing pond, and sand filtration prior to discharge into POTW sewer system through outfall DSN001s. The facility closed on June 30, 2004, but continues to maintain a stormwater permit which was issued and became effective on April 7, 2005, and expired on March 31, 2010.

53. Kennedy Valve Company, Elmira, New York facility has a New York State

Department of Environmental Conservation ("NYDEC") issued State Pollutant Discharge Elimination System ("SPDES") General Permit for storm water discharges associated with industrial activity, Permit No. GP-93-05, which became effective on August 1, 1993 (the 1993 storm water permit). NYDEC issued the subsequent SPDES General Permit for storm water discharges associated with industrial activity, Permit No. GP-98-03, which became effective on November 1, 1998 (the 1998 storm water permit). Both permits authorize storm water discharges at facilities classified under SIC Code 33, facilities considered to be engaging in industrial activity. Kennedy Valve is classified under SIC Code 3321, Gray and Ductile Iron Foundries. Kennedy Valve did not submit a Notice of Intent ("NOI") for coverage under the 1993 storm water permit nor did it submit an application for an individual storm water permit. Kennedy Valve submitted a NOI, dated February 22, 2000, for coverage under the 1998 storm water permit. Kennedy Valve's NOI was received by NYDEC on February 28, 2000. The NOI was entered into the NYDEC storm water database on March 2, 2000. Kennedy Valve's coverage under the 1998 storm water permit became effective on the date of receipt, February 28, 2000. The Chemung County Sewer District issued an industrial user permit (Permit No. 19) to Kennedy Valve on February 17, 2000. The permit became effective on March 1, 2000 and expired on March 1, 2005, but has been administratively extended. Kennedy Valve's current SPDES multi-sector permit (Permit No. GP-0-06-002) became effective on March 28, 2007 and will expire on March 27, 2012.

54. M & H Valve Company, Anniston, Alabama facility currently operates under an individual NPDES Permit No. AL0074730, which became effective on July 1, 2008 and expires on June 30, 2013. The previous permit became effective on July 1, 2003 and expired on June 30, 2008. The permit authorizes the discharge of storm water from foundry operations from outfall

001, and non-contact cooling water from outfall 002 to Snow Creek via an un-named tributary. Snow Creek is classified as a Fish and Wildlife refuge in the Coosa River Basin. Storm water drains from an area of twenty five acres. Structural control to reduce pollutants in storm water runoff consists of hay bales around storm drains. A road sweeper is also utilized to clean foundry sand and dust from the plant area. Prior to this permit, the facility operated under an industrial General Permit No. ALG120181 that expired on September 30, 2002.

55. M & H Valve Company, Anniston, Alabama facility operates a landfill which is covered by its own individual NPDES Permit No. AL0074187 and is located a few miles away from the manufacturing facility in Anniston, Alabama. The previous permit became effective on April 1, 2002 and expired on March 31, 2007. The current permit was issued on March 1, 2007, became effective on April 1, 2007, was modified on October 28, 2008, and will expire on March 31, 2012. The permit authorizes the discharge of storm water runoff associated with the non-hazardous foundry sand landfill from foundry operations under outfall 001 to Cane Creek via an unnamed tributary.

56. Manchester Tank Company, Bedford, Indiana facility currently operates under an industrial wastewater pretreatment ("IWP") permit (Permit No. INP000174) issued by Indiana Department of Environmental Management which became effective on January 1, 2007, and will expire on December 31, 2011. The facility has a general permit issued by IDEM (Permit No. INR200243) for stormwater discharges associated with industrial activities.

57. Manchester Tank Company, Crossville, Tennessee facility currently operates under a Tennessee multi-sector permit (TNR054575) which became effective on July 14, 2009. It will expire on May 14, 2014 and covers stormwater discharge associated with industrial

activity. The facility's industrial wastewater discharge permit became effective on March 16, 2009, and will expire on March 16, 2013.

58. Manchester Tank Company, Elkhart, Indiana facility currently operates under a industrial wastewater discharge permit (Permit No. 92-06), issued by the City of Elkhart, which became effective on May 19, 2009, and will expire on May 19, 2014.

59. Manchester Tank Company, Quincy, Illinois currently operates under a General NPDES Permit (Permit No. ILR10G442), issued by the Illinois Environmental Protection Agency on April 3, 2009, which became effective on May 1, 2009, and will expire on April 30, 2014. This general permit covers stormwater discharges associated with industrial activity. The facility also has an industrial wastewater discharge permit with the City of Quincy (Permit No. QWTF#14-005) which was issued on August 22, 2007, became effective on August 31, 2007 and will expire on August 31, 2012.

60. Manchester Tank Company, Petersburg, Virginia facility was issued a General Permit for storm water discharges associated with industrial activity storm water permit numbered VAR051251 by the Virginia Department of Environmental Quality ("VADEQ") on July 1, 2004, and expired on June 30, 2009. This permit authorized the Manchester Tank-Petersburg facility to discharge storm water into an unnamed tributary of Cattail Run in accordance with the terms and conditions of the permit. This facility closed on June 5, 2009.

61. Tyler Pipe Company, Macungie, Pennsylvania facility was issued NPDES Permit No. PAR202218 pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and the Pennsylvania Clean Streams Law, 35 P.S. §§ 591 et seq., by the Pennsylvania Department of Environmental Protection ("PADEP") which allows the Tyler Pipe-Macungie facility to discharge industrial storm water into Swabia Creek under certain terms and conditions contained in its NPDES

Permit. The Tyler Pipe-Macungie facility NPDES Permit expired on October 15, 2002.

The facility's NPDES Permit required Tyler Pipe to apply for renewal of the permit six months prior to expiration. The facility did not file a timely application for renewal of its NPDES permit. The facility eventually filed an application to renew its NPDES permit, and a new NPDES permit was issued to the Tyler Pipe-Macungie facility on September 8, 2004, and subsequently revised on March 1, 2006.

FACILITY AUDITS AND INSPECTIONS

62. Between 2001 and 2004, Defendant conducted multi-media self-audits of its individual facilities as listed in Paragraph 12.

63. From 2000 to 2005, EPA conducted multi-media inspections of the Amerex Corporation, Trussville, Alabama facility; Clow Valve Company, Oskaloosa, Iowa facility; Clow Water Systems Company, Coshocton, Ohio facility; Empire Coke Company, Holt, Alabama facility; Kennedy Valve Company, Elmira, New York facility; M & H Valve Company, Anniston, Alabama facility; M & H Valve Company (Landfill), Calhoun County, Alabama facility; and mines and disposal sites including Dilworth Mine, Sipsey, Alabama; Dilworth Washer, Sipsey, Alabama; Mitrisin Disposal Site, Iowa; Rice Chapel Mine, Sipsey, Alabama; and Sipsey Mine, Warrior, Alabama.

THE FEDERAL CLAIMS FOR RELIEF

Statutory and Regulatory Background (CAA)

64. The CAA, 42 U.S.C. §§ 7401, et seq., and the regulations promulgated thereunder, establish a statutory and regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

The National Ambient Air Quality Standards

65. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse mobile or stationary sources. For each such pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (“NAAQS”) requisite to protect the public health and welfare. Pursuant to Sections 108 and 109, EPA has identified and promulgated NAAQS for each such pollutant, codified at 40 C.F.R. § 50.15.

66. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an “attainment” area. An area that does not meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient data is “unclassifiable.”

Prevention of Significant Deterioration Requirements

67. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration (“PSD”) of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making.

process. These provisions and the implementing regulations at 40 C.F.R. Part 52 are herein referred to as the "PSD regulations."

68. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require states to adopt a state implementation plan ("SIP") that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.

69. A state may comply with Sections 110(a) and 161 of the Act by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

70. Where a state does not have a PSD program that has been approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP under 40 C.F.R. § 52.21(a).

71. EPA approved the states' proposed PSD programs and incorporated by reference the PSD regulations of 40 C.F.R. § 52.21 into the states' SIPs as set forth in the table below:

STATE	SIP CITATION - CFR	STATE PSD REGULATION
Alabama	40 C.F.R. § 52.50 (Subpart B)	Admin. Code r.335-14-.04
Iowa	40 C.F.R. § 52.820 (Subpart Q)	567 Iowa Admin. Code 22.4 and 567 Iowa Admin. Code 33
Ohio	40 C.F.R. § 52.1870 (Subpart KK)	Ohio Admin. Code 3745 - 31

72. Pursuant to 40 C.F.R. § 52.21(i)), an existing "major stationary source" that implements a "major modification," is required to obtain a PSD permit before commencing the

modification, if the modification will cause a “significant net emission increase” in the emissions of the source, as defined by the threshold amounts for specific pollutants set forth at 40 C.F.R. § 52.21(b)(23).

73. Section 165(a) of the CAA and the PSD regulations at 40 C.F.R. § 52.21(j) and corresponding state regulations also require a source with a major modification in an attainment or unclassifiable area to install and operate best available control technology (“BACT”), as defined at 40 C.F.R. § 52.21(b)(12) and 42 U.S.C. § 7479(3) and in the corresponding state regulations, for each pollutant regulated under the CAA for which the modification would result in a significant net emissions increase.

74. “Major stationary source” is defined in pertinent part at 40 C.F.R. § 52.21(b)(2), as a “stationary source” with the potential to emit pollutants subject to regulation in an amount equal or greater than 250 tons/year.

75. 40 C.F.R. § 52.21(b)(2)(i) defines a “major modification” as “any physical change or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation.”

76. “Net emissions increase” means “the amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and (b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i) and OAC Rule 3745-31-01.

77. “Significant” means a rate of emissions that would equal or exceed any of the following rates for the following pollutants: ozone, 40 tons per year of volatile organic

compounds (VOC); PM, 25 tons per year; and PM₁₀, 15 tons per year. 40 C.F.R.

§ 52.21(b)(23)(i) and OAC Rule 3745-31-01.

78. 40 C.F.R. § 52.23 provides that the failure by a person to comply with any approved regulatory provision of a SIP, including any permit limitation or condition contained with an operating permit issued under a program that is incorporated into a SIP, shall render such person subject to enforcement action pursuant to Section 113 of the CAA.

79. The provisions of each state's SIP are federally enforceable pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. Section 113 of the CAA authorizes the Administrator to bring a civil action for injunctive relief and civil penalties against any person who owns or operates a major emitting facility or major stationary source and has violated an applicable SIP, at any time more than 30 days after the Administrator has notified that person of the violation.

80. Pursuant to Section 113(b) of the CAA, as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Debt Collection Improvement Act, 31 U.S.C. § 3701, EPA may commence a civil action for injunctive relief and civil penalties of not more than \$25,000 per day for these violations of the CAA, including violations of any applicable SIP, that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, \$32,500 per day for each such violation occurring after March 15, 2004 through January 11, 2010, and \$37,500 for each such violation occurring after January 12, 2009.

Title V Permit Program

81. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources." Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a permit program to be administered by any air pollution control agency, found at 57 Fed. Reg. 32,250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70, and are referred to herein as the "Title V regulations."

82. For facilities in those states in which violations of Title V are alleged, the states' Title V programs were granted final full approval by EPA and the states' Title V operating permit requirements codified in their Administrative Codes as follows:

State	Effective Date	Title V Citation - Federal Regulation	State Title V Regulation
Alabama	Nov. 28, 2002	66 Fed. Reg. 54,444	Ala. Admin. Code rs. 335-3-1-.01 <u>et seq.</u>
California South Coast Air Quality Management District	Nov. 30, 2001	66 Fed. Reg. 63,503	Cal. Health and Safety Code § 42300 <u>et seq.</u>
Illinois	Nov. 30, 2001	66 Fed. Reg. 62,946	415 Ill. Comp. Stat. 5/39.5
Iowa	Sept. 12, 1997	62 Fed. Reg. 37,514	Iowa Code § 455B.133(8)(a) and 567 Iowa Admin. Code 22.100 <u>et seq.</u>
Ohio	Oct. 1, 1995	60 Fed. Reg. 42,045	Ohio Admin. Code 3745-77

Tennessee	Nov. 30, 2001	66 Fed. Reg. 56,996	Tenn. Comp. R. & Regs. 1200-3-9 <u>et seq.</u>
Texas	Nov. 30, 2001	66 Fed. Reg. 63,318	30 Tex. Admin. Code § 122 <u>et seq.</u>
Utah	June 8, 1995	60 Fed. Reg. 30,192	Utah Admin. Code R.19-2-109.1

83. Under Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and its implementing regulations at 40 C.F.R. § 70.1(b), it is unlawful for any person to violate any requirement of a permit issued under Title V or to operate a “major source” except in compliance with a permit issued by a permitting authority under Title V.

84. “Major source” is defined in Section 501 of the Act, 42 U.S.C. § 7661(2), and in 40 C.F.R. § 70.2, as, among other things, any source which directly emits or has the potential to emit 100 tons or more per year of any regulated air pollutant. Ozone is listed as a regulated air pollutant under 40 C.F.R. § 70.2.

85. Section 503 of the Act, 42 U.S.C. § 7661b, and 40 C.F.R. § 70.5(a), require any owner or operator of a source subject to Title V permitting requirements to submit a timely and complete permit application. Among other things, this permit application must contain information sufficient to evaluate the subject source and its application and to determine all applicable requirements (including any requirement to meet applicable control technology requirements pursuant to PSD or non-attainment New Source Review (“NSR”), and to comply with a NSPS), certification of compliance with all applicable requirements, information that may be necessary to determine the applicability of other applicable requirements of the CAA and a compliance plan for all applicable requirements for which the source is not in compliance, pursuant to 40 C.F.R. § 70.5(a).

86. Title V, Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), and 40 C.F.R. § 70.6a, require that each Title V permit include, among other things, enforceable emission limitations and such other conditions as are necessary to assure compliance with “applicable requirements” of the CAA and the requirements of the relevant SIP.

87. The Title V regulations define “applicable requirements” at 40 C.F.R. § 70.2, as including any relevant PSD, non-attainment NSR, NESHAP, and NSPS requirements.

88. The Title V regulations state at 40 C.F.R. § 70.5(b) that any applicant, who fails to submit any relevant facts or who has submitted incorrect information in a permit application, shall promptly submit such supplementary facts or corrected information upon becoming aware of such failure or incorrect submission.

89. Section 503(d) of the Act, 42 U.S.C. § 7661b(d), provides that, if an applicant has submitted a timely and complete application for a Title V permit, but final action has not been taken on such application, the applicant’s failure to have a permit shall not be a violation of Title V of the CAA unless the delay in final action was due to the failure of the applicant to timely submit information required or requested to process the application. This provision is referred to as the “application shield.”

Statutory Background (CWA)

90. The objective of the CWA, 33 U.S.C. §§ 1251 et. seq., is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

91. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant" from a point source into navigable waters of the United States except as authorized by and in compliance therewith.

92. Pursuant to Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), the Administrator of EPA may issue an NPDES permit, which authorizes the discharge of pollutants into navigable waters of the United States, upon the condition that such discharge meets all applicable requirements of the CWA. Section 402(a)(2) of the CWA, 33 U.S.C. § 1342(a)(2), directs the Administrator of EPA to prescribe conditions for NPDES permits to assure compliance with the requirements of the CWA, including conditions on data and information collection, reporting, and such other requirements as the Administrator deems appropriate.

93. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions established by a state or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, and may include schedules of compliance. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under Section 402(a) of the CWA, 33 U.S.C. § 1342(a). No NPDES permit may be issued when the imposition of conditions cannot ensure compliance with the applicable water quality standards of all affected states pursuant to 40 C.F.R. § 122.4(d).

94. A permittee shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of the NPDES permit pursuant to 40 C.F.R. § 122.41(e).

95. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), each state may administer its own permit program if the program has been approved by the Administrator of EPA. The states of Alabama, California, Illinois, Indiana, Iowa, Missouri, New York, Ohio, Pennsylvania, Tennessee, and Virginia are authorized by the Administrator of EPA to administer the NPDES permit program for regulating the discharges of pollutants into navigable waters within each state's jurisdiction.

96. An individual NPDES permit can be obtained by submitting an application in accordance with the requirements of 40 C.F.R. § 122.21. A facility becomes authorized to discharge upon the effective date of the issued individual permit.

97. Pursuant to 40 C.F.R. § 122.46(a), NPDES permits are effective for a fixed term which cannot exceed five years from the effective date of the permit. NPDES permits can be renewed by application in accordance with the requirements of 40 C.F.R. § 122.21.

98. Coverage under an expired permit will be continued if the permittee timely applies for renewal and the agency has not made a decision by the expiration date pursuant to 40 C.F.R. § 122.6(a). Renewal applications are due 180 days prior to expiration pursuant to 40 C.F.R. § 122.21(d).

99. The term "pollutant" is defined to include solid waste, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, industrial, and agricultural waste discharged into water pursuant to 33 U.S.C. § 1362(6) of the CWA.

100. The term "discharge" is defined to include the discharge of a pollutant or pollutants pursuant to 33 U.S.C. § 1362(16) of the CWA.

101. The term "discharge of a pollutant" includes the addition of any pollutant to navigable water from any point source pursuant to 33 U.S.C. § 1362(12) of the CWA.

102. The term "navigable waters" means the water of the United States, including the territorial seas pursuant to 33 U.S.C. § 1362(7) of the CWA.

103. The term "point source" is defined to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, and concentrated animal feeding operation from which pollutants are or may be discharged pursuant to 33 U.S.C. § 1362(14) of the CWA.

104. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of the CWA, Section 301, 33 U.S.C. § 1311, or is in violation of any permit condition or limitation in a permit issued under the CWA Section 402, 33 U.S.C. § 1342.

105. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, provides that any person who violates certain enumerated sections of the CWA, including Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each such violation occurring before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, \$32,500 per day for each

such violation occurring after March 15, 2004 through January 11, 2010, and \$37,500 for each such violation occurring after January 12, 2009.

106. For purposes of this Complaint, the CWA claims are cited using the Code of Federal Regulations and the United States Code rather than the analogous delegated state statutory and regulatory provisions.

107. Section 401(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that storm water discharges associated with industrial activity are point sources subject to NPDES permitting requirements under § 402(a) of the CWA, 33 U.S.C. § 1342(p). Any such discharge is subject to such specific terms and conditions as are prescribed in the applicable permit.

108. Pursuant to the CWA, including sections 308 and 402(p), 33 U.S.C. §§ 1318 and 1342(p), the Administrator of EPA promulgated regulations setting forth the permit application requirements for storm water discharges. 55 Fed. Reg. 48063 (Nov. 16, 1990). These regulations are codified at 40 C.F.R. § 122.26.

109. On November 16, 1990, EPA published regulations under the NPDES program which defined the term “storm water discharge associated with industrial activity” to include storm water discharges from “any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” 40 C.F.R. § 122.26(b)(14).

110. Pursuant to 40 C.F.R. § 122.26(c), dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit.

111. 40 C.F.R. § 122.26(b)(14)(vi) defines “storm water discharge associated with industrial activity”, in part, as facilities under SIC Code 3321 (gray iron foundries)(foundry), SIC Code 3366 (copper foundries)(foundry), SIC Code 3492 (industrial value manufacturing - fluid power valves and hose fittings)(machine shop), SIC Code 3498 (fabricated pipe and pipe fittings), and SIC Code 3499 (fabricated metal products, not elsewhere classified).

Oil Pollution Prevention

112. Section 311(j)(1)(C) of the CWA, provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

113. The regulations at 40 C.F.R. Part 112 set forth procedures, methods and requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines. The regulated facilities include those that drill for, produce, gather, store, process, refine, transfer, distribute or consume oil or oil products.

114. For purposes of Section 311(b)(3) of the CWA, EPA promulgated a regulation, set forth at 40 C.F.R. § 110.3, specifying what quantities of oil may be harmful to the public health or welfare or the environment. Such quantities of oil include discharges that either: (a) violate applicable water quality standards, (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or (c) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

115. “Oil” is defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

116. 40 C.F.R. § 110.3(b) defines “harmful quantity” for purposes of Section 311 of the CWA, 33 U.S.C. § 1321, to include discharges that “cause a film or sheen upon . . . the surface of the water or adjoining shorelines.”

117. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2) defines “discharge” to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under 33 U.S.C. § 1342.

118. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), “navigable water” is defined by 40 C.F.R. §§ 110.1 and 112.2 to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.

119. 40 C.F.R. § 112.3 requires the owner or operator of an onshore or offshore facility subject to this section to prepare a Spill Prevention, Control and Countermeasure Plan (“SPCC”) plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of this part.

120. Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, provides that any person who fails to comply with any regulation issued under subsection (j) of this section shall be subject to a civil penalty in an amount up to \$25,000 per day of violation for violations occurring before January 30, 1997, \$27,500 per day for violations occurring from January 30, 1997 through March 15, 2004, \$32,500 per day for violations occurring after March 15, 2004 through January 11, 2010, and \$37,500 for each such violation occurring after January 12, 2009.

Industrial Pretreatment Standards

121. Section 307(b) of the CWA, 33 U.S.C. § 1317(b), requires the Administrator of EPA to establish pretreatment standards for existing and new sources that introduce pollutants into any POTW, as defined in Section 212(2) of the CWA, 33 U.S.C. § 1292(2).

122. Pursuant to Section 307(b)(1) of the CWA, 33 U.S.C. § 1317(b)(1), the Administrator of EPA promulgated general pretreatment regulations for existing and new sources of pollution, codified at 40 C.F.R. Part 403.

123. The provisions of 40 C.F.R. Part 403 apply to each industrial user as defined at 40 C.F.R. § 403.3(j).

124. Pursuant to Section 307(b) of the Act, 33 U.S.C. § 1317(b), the Administrator of EPA promulgated categorical pretreatment standards for the metal molding and casting - ferrous casting subcategory, at 40 C.F.R. Part 464.

125. 40 C.F.R. § 403.3(g) defines an indirect discharge as the introduction of pollutants into a POTW.

126. 40 C.F.R. § 403.3(h) defines an industrial user as a source of indirect discharge.

127. 40 C.F.R. § 403.12(a) defines control authority as a POTW with an approved pretreatment program.

128. Pursuant to 40 C.F.R. § 403.12(o), any industrial user and POTW subject to the reporting requirements in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples: (1) the date, exact place, method, and time of sampling and the names of the person or persons taking the samples; (2) the dates analyses were performed; (3) who performed the analyses; (4) the analytical techniques/methods used; and (5) the results of such analyses.

129. Pursuant to 40 C.F.R. § 403.12(g)(1), the industrial user reports required by paragraphs (b), (d), and (e) of this section shall include the certification statement as set forth in 40 C.F.R. § 403.6(a)(2)(ii), and shall be signed by a responsible corporate officer if the industrial user is a corporation or by a duly authorized representative of the responsible corporate officer.

130. Pursuant to 40 C.F.R. § 403.12(g)(1), the reports required in paragraphs (b), (d), (e), and (h) of this section shall contain the results of sampling and analysis of the discharge, including flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. Furthermore, the reports must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period as set forth in 40 C.F.R. § 403.12(g)(3).

131. Pursuant to 40 C.F.R. § 403.12(b)(4), an industrial user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following: (1) regulated process streams; and (2) other streams as necessary to allow use of the combined wastestream formula of 40 C.F.R. § 403.6(e). Pursuant to 40 C.F.R. § 403.12(g), the reports required in paragraphs (b), (d), and (e) of this section shall contain the results of sampling and analysis of the discharge including, among other things, the flow.

132. Section 307(d) of the CWA, 33 U.S.C. § 1317(d), provides that it is unlawful to operate any source in violation of any pretreatment standard.

133. Sections 309(a)(3), (b) and (d) of the CWA, 33 U.S.C. §§ 1319(a)(3), (b) and (d), authorize the Administrator to commence a civil action for injunctive relief and for civil penalties for each violation of Sections 307 and 308 of the Act, 33 U.S.C. §§ 1317 and 1318.

Statutory Background - Resource Conservation and Recovery Act (RCRA)

134. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976, to amend the Solid Waste Disposal Act, and on the Hazardous and Solid Waste Amendments ("HSWA"), enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a cradle-to-grave program to be administered by the Administrator of EPA and authorized states for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. See 42 U.S.C. § 6901 et seq.

135. RCRA's Subchapter III, RCRA §§ 3001-3023, 42 U.S.C. §§ 6921-6940, known as Subtitle C, required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, and dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260-279, comprise EPA's RCRA hazardous waste program.

136. RCRA § 3006(b), 42 U.S.C. § 6926, allows the Administrator to authorize a state to administer its own hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to the federal program.

137. Pursuant to RCRA § 3006(b), 42 U.S.C. 6926(b), the following states have been granted final authorization by EPA to administer and enforce a hazardous waste program.

State	State Code	Date Authorized by EPA	Federal Register Citation
Alabama	ADEM Admin. Code R. 335-1-4, Hazardous Waste Program Regulations	Authorized Dec. 8, 1987	Effective Dec. 22, 1987 (52 Fed. Reg. 46,466)
California	C.C.R. Title 22 § 4.5 et seq.	Authorized July 23, 1992	Effective August 1, 1992 (57 Fed. Reg. 32,726)

Illinois	Ill. Admin. Code Title 35 § 720	Authorized Jan. 30, 1986	Effective Jan. 31, 1986 (51 Fed. Reg. 3,778)
Indiana	329 Ind. Admin. Code 3.1 <i>et seq.</i>	Authorized Jan. 31, 1986	Effective Jan. 31, 1986 (51 Fed. Reg. 3,953)
Missouri	Mo. Code Regs. Ann. Title 10, § 25-3 <i>et seq.</i>	Authorized Nov. 20, 1985	Effective Dec. 12, 1985 (50 Fed. Reg. 47,740)
New Jersey	N.J. Admin. Code § 7:26G-1.1 <i>et seq.</i>	Authorized Feb. 7, 1985	Effective Feb. 27, 1985 (50 Fed. Reg. 5,260)
New York	N.Y.C.R.R. Title 6, Ch. IV, Subch. B, Pt. 370 <i>et seq.</i>	Authorized May 29, 1986	Effective May 29, 1986 (51 Fed. Reg. 17,737)
Ohio	Ohio Admin. Code 3745:50 <i>et seq.</i>	Authorized June 28, 1989	Effective June 30, 1989 (54 Fed. Reg. 27,170)
Pennsylvania	25 Pa. Code §§ 260a- 266a, 266b, 268a, 270a	Authorized May 29, 1986	Effective May 29, 1986 (51 Fed. Reg. 17,739)
Tennessee	Tennessee Revised Management Standards; Code 1200-1-11. Tennessee Hazardous Waste Management Regulations effective August 23, 2005. Tenn. Comp. R. & Regs. 1200-1-11	Authorized Jan. 22, 1985	Effective Feb. 5, 1985 (50 Fed. Reg. 2,820)
Texas	30 Tex. Admin. Code §§ 335.41-335.47	Authorized Dec. 26, 1984	This authorization (49 Fed. Reg. 48,300) was clarified in a notice published Mar. 26, 1985 (50 Fed. Reg. 11,858)
Utah	Utah Admin. Code R.315-1 <i>et seq.</i>	Approved Oct. 10, 1984	Effective Oct. 24, 1984 (49 Fed. Reg. 39,683)
Virginia	9 Va. Admin. Code § 20- 60 <i>et seq.</i>	Approved Dec. 18, 1984	Effective Dec. 18, 1984 (49 Fed. Reg. 47,391)

138. Pursuant to its authority under Subtitle C of RCRA, 42 U.S.C. § 6922(a), EPA and the states listed above have promulgated regulations applicable to solid and hazardous waste

generators at 40 C.F.R. Parts 261 and 262, to owners/operators of hazardous waste facilities at 40 C.F.R. Parts 264 and 265, to land disposal of solid and hazardous waste at 40 C.F.R. Part 268, to disposal of universal waste at 40 C.F.R. Part 273, and to disposal of used oil at 40 C.F.R. Part 279.

139. EPA and the relevant regulations of the states listed above require that generators of hazardous waste must, among other things:

- a. meet standards for generators of hazardous waste, 40 C.F.R. § 262.10;
- b. determine whether generated solid wastes are hazardous, 40 C.F.R. § 262.11;
- c. ensure that all off-site shipments of hazardous waste are transported to facilities possessing an EPA identification number (40 C.F.R. § 262.12(c));
- d. prepare a hazardous waste manifest for each off-site shipment of hazardous waste (40 C.F.R. § 262.20);
- e. certify as large or small quantity generators and waste management methods when initiating shipments of hazardous waste (40 C.F.R. § 262.27);
- f. obtain either (1) a RCRA permit or (2) interim status, 40 U.S.C. § 6925, unless they accumulate waste for less than 90 days in a manner consistent with the requirements of 40 C.F.R. § 262.34(a);
- g. maintain for three years records of any test results, waste analyses, or other determinations made of any shipments of hazardous waste for treatment, storage, or disposal (40 C.F.R. § 262.40(c));
- h. ensure proper use and management of containers storing hazardous waste, 40 C.F.R. § 264.173;

- i. ensure proper hazardous waste management during interim status, until final closure, or until post-closure responsibilities are fulfilled, 40 C.F.R. Part 65;
- j. ensure that facility personnel are properly trained in hazardous waste management, 40 C.F.R. § 265.16;
- k. ensure that arrangements with local authorities are made for emergency response, 40 C.F.R. § 265.37;
- l. ensure that a contingency plan is in place for emergency response, 40 C.F.R. § 265.52;
- m. ensure inspection of hazardous waste container storage areas, 40 C.F.R. § 265.174;
- n. treat, store, and dispose of hazardous waste in compliance with a permit or (if they qualify for interim status) with interim status requirements;
- o. meet certain requirements for waste treatment prior to placement or disposal of hazardous waste on the land (40 C.F.R. § 268).
- P. ensure that small quantity handlers properly label or mark universal waste, 40 C.F.R. § 273.14;
- q. ensure training for small quantity handlers of universal waste, 40 C.F.R. § 273.16;
- r. ensure training for large quantity handlers of universal waste, 40 C.F.R. § 273.36;
- s. ensure proper management of used oil, 40 C.F.R. § 279.10;
- t. ensure proper management of mixtures of used oil and hazardous waste, 40 C.F.R. § 279.21; and
- u. ensure proper storage of used oil, 40 C.F.R. § 279.22.

140. Pursuant to RCRA §§ 3008(a) and (g) and 3006(g), 42 U.S.C. §§ 6928(a) and (g) and 6926(g), the United States may enforce the federally-approved state hazardous waste programs, as well as the federal regulations that remain effective in the above-listed states, by filing an action in the U.S. District Court seeking civil penalties not to exceed \$25,000 per day per violation, and injunctive relief.

141. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, permits EPA to seek the imposition of penalties of up to \$27,500 per day for each violation occurring on or after January 31, 1997, \$32,500 per day for each violation occurring on or after March 15, 2004 through January 11, 2010, and \$37,500 for each such violation occurring after January 12, 2009.

Statutory Background - Comprehensive Emergency Response, Compensation, and Liability Act (CERCLA)

142. Section 103 of CERCLA, 42 U.S.C. § 9603, requires any person in charge of a “facility” to report a release of a “hazardous substance” above a specified amount to the National Response Center (“NRC”) as soon as he has knowledge of any release.

143. Pursuant to 40 C.F.R. § 302.6, a release of a CERCLA “hazardous substance” from a “facility” that occurs above the specified “reportable quantity” (“RQ”) must be reported to the NRC immediately as soon as any person in charge of a facility has knowledge of the release.

144. A “facility” is defined at Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), in pertinent part, as “... any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located”

145. CERCLA “hazardous substances” are designated under the authority of Section 102 of CERCLA, 42 U.S.C. § 9602, and are listed in 40 C.F.R. § 302.4, Table 302.4, where EPA has established a “RQ” for each “hazardous substance.” Specific to the instant case, lead is designated at 40 C.F.R. § 302.4, Table 302.4, as a CERCLA “hazardous substance” with an “RQ” of 10 lbs. per day.

146. Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, authorizes the President to bring a judicial action to assess a penalty of up to \$27,500 per day for each day during which the violation continues for violations occurring from January 30, 1997 through March 15, 2004, \$32,500 per day for each day during which the violation continues for violations occurring after March 15, 2004 through January 11, 2010, and \$37,500 for each such violation occurring after January 12, 2009.

**Statutory and Regulatory Background - Emergency Planning and
Community Right-To-Know Act (EPCRA)**

147. Sections 301 to 303 of EPCRA, 42 U.S.C. §§ 11001 to 11003, imposes and mandates notification requirements on industrial and commercial facilities and requires the creation of state emergency response commissions and local emergency planning committees. EPCRA establishes a framework of state, regional, and local agencies designed to inform the public about the presence of hazardous and toxic chemicals, and to provide for emergency response in the event of health-threatening release. The local emergency planning committees are charged with developing emergency response plans based on the information provided by facilities.

148. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of extremely hazardous substances ("EHSs") which, when released into the environment, may present substantial danger to public health or welfare or the environment, and to promulgate regulations establishing that quantity of any EHS, the release of which shall be required to be reported under Sections 304(b) and (c) of EPCRA 42 U.S.C. § §11004(b) and (c) ("reportable quantity" or "RQ"). The list of RQs for extremely hazardous substances is codified at 40 C.F.R. Part 355, Appendices A and B.

149. Section 304(a)(3) and (b) of EPCRA, 42 U.S.C. §§ 11004(a)(3) and (b), and 40 C.F.R. § 355.40 require the owner or operator of a "facility" to give notice of a release of a "hazardous substance" immediately after the release to the community emergency coordinator for the local emergency planning committee ("LEPC") and the state emergency planning commission ("SERC") for any release which requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

150. A "facility" is defined at Section 329 of EPCRA, 42 U.S.C. § 11049, as: all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person". . .

151. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required under the Occupational Safety and Health Act of 1970), 29 U.S.C. § 651 *et seq.*, to prepare or have available a material safety data sheet for a hazardous chemical, to prepare and submit to the SERC, LEPC and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370).

152. Instructions for preparing the Tier II emergency and hazardous chemical inventory form are provided at 40 C.F.R. § 370.41. The instructions require, among other things, that the chemical abstract service registry number ("CAS") be entered on the form.

153. EPCRA requires the owner or operator of a facility subject to Section 313(a) of EPCRA to submit annually, no later than July 1 of each year, a toxic chemical release inventory reporting form ("Form R") for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed, or otherwise used during the preceding calendar year in quantities exceeding established chemical thresholds.

154. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that a covered facility is one that has 10 or more full-time employees and that is in SIC codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under Section 313(c) of EPCRA in excess of the threshold quantity of that toxic chemical established under Section 313(f) of EPCRA during the calendar year.

155. Section 313 of EPCRA, 42 U.S.C. § 11023, and the regulations promulgated thereunder, require Defendant McWane to annually calculate and report to EPA various data regarding toxic chemicals at their respective facilities during the preceding year. Such data must include the "annual quantity of the toxic chemical entering each environmental medium."

156. 40 C.F.R. § 372.22 sets forth the threshold reporting amounts for filing the Form R report, which equals 25,000 lbs. per year for chemical "manufactured or processed" by a facility and 10,000 lbs. per year for chemicals "otherwise used."

157. 40 C.F.R. § 372.3 defines the term "manufacture" to mean to produce, prepare, import or compound a toxic chemical. Manufacture also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use, or disposal of another chemical

or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that chemical or mixture of chemicals as an impurity.

158. Pursuant to 40 C.F.R. § 372.3, “otherwise used” is defined as “any use of a toxic chemical that is not covered by the terms manufacture or process and includes use of a toxic chemical contained in a mixture or trade name product.”

159. Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and the Federal Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, authorizes the Administrator to bring a judicial action to assess a penalty of up to \$27,500 per day for each day during which the violation continues for violations occurring from January 30, 1997 through March 15, 2004, \$32,500 per day for each day during which the violation continues for violations occurring on or after March 15, 2004 through January 11, 2010, and \$37,500 for each such violation occurring on or after January 12, 2009.

Statutory Background - Safe Drinking Water Act (SDWA)

160. In 1976, Congress enacted the SDWA to protect the nation’s drinking water sources.

161. Part C of the SDWA, 42 U.S.C. § 300h et. seq., was enacted to prevent contamination of underground sources of drinking water.

162. Section 1412(c) of the SDWA, 42 U.S.C. § 300-g-1(c) and the regulations promulgated by EPA thereunder establish national secondary drinking water standards.

163. Section 1421 of the SDWA, 42 U.S.C. § 300h, directs the Administrator of EPA to regulate underground injection control programs by establishing requirements to prevent contamination of underground sources of drinking water through wells.

164. Sections 1423(a)(2) and 1423(b) of the SDWA, 42 U.S.C. §§ 300h-2(a)(2) and 300-h-2(b), authorize the Administrator to commence a civil action “for the appropriate relief as protection of public health may require,” when any person has violated or is in violation of any requirement of the underground injection control program.

165. Pursuant to Section 1423(b) of the SDWA, 42 U.S.C. §§ 300h-2(b), and 40 C.F.R. Part 19, any person who violates any requirement of the UIC program is liable to the United States for a civil penalty of up to \$27,500 for each day of such violation that occurs through March 15, 2004, up to \$32,500 for each day of violation that occurs after March 15 through January 11, 2010, and \$37,500 for each such violation occurring on or after January 12, 2009.

Statutory Background - Toxic Substances Control Act (TSCA)

166. The Toxic Substances Control Act (“TSCA”) 15 U.S.C. §§ 2601 to 2692, and the regulations promulgated thereunder, establish a statutory and regulatory scheme designed to protect the public health and the environment that is exposed to a large number of chemical substances and mixtures.

167. Section 6(e) of the TSCA, 15 U.S.C. § 2605, and the regulations promulgated thereunder, directs EPA to regulate the manufacture, importation, processing, distribution in commerce, use, disposal, and labeling of polychlorinated biphenyls (“PCBs”) and items containing PCBs.

168. Effective January 1, 1978, Congress banned virtually all manufacture, processing, and distribution of PCBs in commerce, per TSCA § 6(e)(2)(A), 15 U.S.C. § 2605(e)(2)(A).

169. PCBs must be used in a "totally enclosed manner", per 40 C.F.R. § 761.3, or in a manner that is not totally enclosed if it finds that such use will not present an unreasonable risk of injury to health and the environment, per TSCA § 6(e)(2)(B), 15 U.S.C. § 2605(e)(2)(B), and 40 C.F.R. § 761.30.

170. Per 40 C.F.R. § 761 subpart C, PCB regulations address the marking and labeling of PCB items such as transformers and other forms of electrical equipment. These regulations prescribe standard formats for PCB labels, including size, color, and content.

171. Per 40 C.F.R. § 761.65, EPA's regulations also prescribe requirements for the storage and disposal of waste PCBs and PCB items. All storage facilities must satisfy technical standards designed to prevent the release of PCBs, and when PCB items are removed from service, they must be disposed of within one year.

172. Per 40 C.F.R. § 761 subpart C, PCB regulations track all waste PCBs from their generation to their ultimate disposal by establishing a manifest system. Generators, storers, transporters, and disposers of waste PCBs must obtain an identification number, which is included on a written manifest when wastes are shipped off site for disposal. When the designated disposal facility receives the waste, it must sign the manifest and return it to the generator.

FIRST CLAIM FOR RELIEF - CAA
(Failure to Obtain PSD Permit, Clow Water Systems Company, Coshocton, Ohio)

173. Paragraphs 1 through 172 are realleged and incorporated herein.

174. From at least 1989 to the present, Coshocton County, Ohio where the Clow Water Systems Facility is located, has been classified as attainment or unclassifiable for ozone and PM/PM₁₀. 40 C.F.R. § 81.336.

175. At all times relevant to this action, Clow Water Systems was a "major stationary source" as defined by 40 C.F.R. § 52.21(b) and OAC Rule 3745-31-01, that emitted or had the potential to emit pollutants regulated by the CAA in an amount equal to or greater than 100 tons per year. The Clow Facility has the potential to emit, among other things, greater than 100 tons per year of PM, PM₁₀ and ozone.

176. At all times relevant to this action, Clow Water Systems was a "major stationary source" within the meaning of Section 302(j) of the CAA, 42 U.S.C. § 7602(j), and a "major source" as defined at 40 C.F.R. § 70.2.

177. Clow Water Systems operates a cupola furnace which was installed prior to 1972 to generate molten iron at its facility in Coshocton, Ohio. In 1989, Clow Water Systems modified the cupola furnace by installing new hot blast air equipment. In 1998, Clow Water Systems modified the cupola furnace by replacing the 102-inch lined lower shell of the cupola furnace with a 108-inch unlined lower shell. These modifications resulted in a significant net emissions increase of VOCs, PM and PM₁₀ as defined by 40 C.F.R. § 52.21(b)(23)(i) and OAC Rule 3745-31-01. Accordingly, the 1989 and 1998 modifications of the cupola furnace constituted "major modifications" within the meaning of 40 C.F.R. § 52.21(b)(2)(I) and OAC Rule 3745-31-01 that required Clow Water Systems to obtain a PSD permit.

178. Defendant McWane failed to obtain the PSD permit required by Section 165(a) of the CAA, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(i) which was incorporated by reference by the federally approved and enforceable Ohio SIP, and OAC Rule 3745-31-13, prior to the 1989 and 1998 modifications of the cupola furnace, and thereafter operated the modified cupola furnace without the required PSD permit.

179. On or about April 11, 2002, OEPA issued a NOV to Clow Water Systems for violations of the CAA's requirement to obtain PSD permits prior the modifications of the cupola furnace in 1989 and 1998. On April 24, 2008, EPA issued a NOV to Clow Water Systems for PSD violations and other violations.

180. The Clow Water Systems facility currently operates under a Final Air Pollution Permit to Install (PSD Permit No. 06-07432) that was issued on July 8, 2009, by the Ohio EPA for modification made to the cupola and other support emissions units in 1989 and 1998.

181. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SECOND CLAIM FOR RELIEF - CAA
(Failure to Implement BACT, Clow Water Systems Company, Coshocton, Ohio)

182. Paragraphs 1 through 181 are realleged and incorporated herein.

183. In making the 1989 and 1998 modifications of the cupola furnace, Defendant McWane failed to implement BACT to control PM and PM10, in violation in CAA § 165(a),

42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(j), which was incorporated by reference by the federally approved and enforceable Ohio SIP, and Ohio Admin. Code 3745-31-15.

184. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

THIRD CLAIM FOR RELIEF - CAA
(Failure to Identify All Applicable Requirements in Title V Application, Clow Water Systems Company, Coshocton, Ohio)

185. Paragraphs 1 through 184 are realleged and incorporated herein.

186. On June 27, 1996, Clow Water Systems submitted a Title V permit application to OEPA for its facility in Coshocton, Ohio. Clow Water Systems subsequently submitted revised applications on May 10, 1998, September 8, 1998, and February 19, 1999. These applications did not identify all applicable requirements and did not contain a compliance plan for all applicable requirements for which the facility was not in compliance (including the requirements to meet emission limitations consistent with BACT for the cupola furnace) as required by Section 503(c) of the CAA, 42 U.S.C. § 7661b(c).

187. On June 8, 2000, OEPA issued a Title V permit for Clow Water Systems. The Title V permit does not include a schedule of compliance and conditions necessary to assure compliance with applicable requirements of the CAA (including the requirements to meet emission limitations consistent with BACT for the cupola furnace) as required by Section 504(a) of the CAA, 42 U.S.C. § 7661c(a).

188. Part III (Terms and Conditions for Emissions Units) of the Title V permit for Clow Water System's facility in Coshocton, Ohio provides the following operational restrictions for the cupola furnace (P901): (1) the pressure drop across the scrubber shall be continuously maintained within a range of 35 to 60 inches of water column at all times while the emissions unit is in operation; (2) emissions unit gases shall be burned at 1,300 degrees Fahrenheit in a direct flame afterburner or equivalent device, designed for a minimum of 0.3 second residence time.

189. From calendar year 2000 through calendar year 2006, Clow Water Systems on numerous occasion failed to comply with the operational restrictions in the Title V permit.

190. Part III (Terms and Conditions for Emissions Units) of the Title V permit for Clow Water Systems provides the following monitoring and/or record keeping requirements for the cupola furnace (P901): (1) the permittee shall properly install, operate and maintain equipment to continuously monitor the static pressure drop across the scrubber and the afterburner temperature while the emissions unit is in operation; (2) the permittee shall collect and record each day the pressure drop across the scrubber, in inches of water, a minimum of every 2 hours.

191. From calendar year 2000 through calendar year 2006, Clow Water Systems on numerous occasions failed to comply with the monitoring requirements in the Title V permits.

192. Clow Water Systems will continue to violate the requirement to obtain a Title V permit which includes a schedule of compliance and conditions necessary to assure compliance with applicable requirements of the CAA (including the requirements to meet emission limitations consistent with BACT for the cupola furnace) in Section 503(c) of the CAA, 42 U.S.C. § 7661b(c), at Clow Water Systems.

193. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FOURTH CLAIM FOR RELIEF - CAA
(Failure to Comply with Operations Restrictions in Title V Permit, Clow Water Systems Company, Coshocton, Ohio)

194. Paragraphs 1 through 193 are realleged and incorporated herein.

195. Based on the results of an EPA inspection, Defendant McWane failed to comply with operational restrictions for temperature and pressure in its Title V permit, including pressure drop across venturi scrubber was not maintained within operational restrictions; afterburner temperature was not maintained within operational restrictions; pressure drop monitor was not in operation; and afterburner temperature monitor was not in operation, in violation of CAA § 165, 40 C.F.R. § 70.6(b), and Ohio Admin. Code 3745-21-08(D) and the Title V permit.

196. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FIFTH CLAIM FOR RELIEF - CAA
(Failure to Record Emissions, Clow Water Systems Company, Coshocton, Ohio)

197. Paragraphs 1 through 197 are realleged and incorporated herein.

198. Defendant McWane failed to record particulate emissions from the Laempe dust collector in violation of the Clow Water Systems facility's Title V operating permit, and Section 502(a) of the CAA, 42 U.S.C. § 7661a(a).

199. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SIXTH CLAIM FOR RELIEF - CAA

(Failure to Maintain Complete Accurate Records, Clow Water Systems Company, Coshocton, Ohio)

200. Paragraphs 1 through 199 are realleged and incorporated herein.

201. Part III (Terms and Conditions for Emission Units) of the Title V permit for Clow Water Systems requires monitoring and/or recordkeeping for visible particulate emissions and/or VOCs for a number of emission units including the cupola, isocure laempe, isocure core machine [F014], the fittings painting equipment [K002], the pipe paint operation [K006], and the core wash-core wash machine braker [K009].

202. Based on a 2004 audit conducted by McWane, Clow Water Systems failed to perform accurate and/or complete daily visible emission readings and recordkeeping for several items of equipment including the cupola, isocure laempe, isocure core machine [F014], the fittings painting equipment [K002], the pipe paint operation [K006], and the core wash-core wash machine braker [K009] as required by Part III of the Title V permit, in violation of the facility's Title V permit and Section 502a(a) of the CAA, 42 U.S.C. § 7661a(a).

203. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SEVENTH CLAIM FOR RELIEF - CAA

(Failure to Obtain Permit to Install Emissions Units, Clow Water Systems Company, Coshocton, Ohio)

204. Paragraphs 1 through 203 are realleged and incorporated herein.

205. Based on reporting in the Clow Water Systems facility's Title V application and a 2004 audit conducted by McWane, Clow Water Systems between 1990 and 1997 installed several items of equipment and/or made physical changes to several emission units at its facility in Coshocton, Ohio without first obtaining the PSD permits required by Section 165(a) of the CAA, 40 C.F.R. § 52.21(i), and OAC Rule 3745-31-13, in violation of CAA § 165, 40 C.F.R. § 70.6(a)(3), Ohio Admin. Code 3745-31, and Ohio Admin. Code 3745-35. These items of equipment or emission units include the BMM Sand Prep Plant and Molding (F006), Pour Main Floor (F008), Scrap Yard and Metal Charge Hopper (F017), Pipe Casting (F018), Roadways and Parking (F019), Solid Waste Bunker (F020), Core Wash - Main Floor (K007), Molding Spray - Main Floor (K008), and Hot Blast Furnace (P033). The facility currently operates under a Title V permit which contains the aforementioned pieces of equipment (Permit No. 06-16-01-0006) that was issued by the Ohio EPA on June 8, 2000, and which expired on June 8, 2005..

206. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that

occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

EIGHTH CLAIM FOR RELIEF - CAA

(Failure to Maintain Records, Clow Water Systems Company, Coshocton, Ohio)

207. Paragraphs 1 through 206 are realleged and incorporated herein.

208. Based on an audit conducted by McWane, Defendant McWane failed to verify that Clow Water Systems records regarding refrigerant use in appliances were being properly kept by contractor, in violation of CAA § 608 and 40 C.F.R. § 82.166.

209. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

NINTH CLAIM FOR RELIEF - CAA

(Failure to Maintain Proper Recordkeeping Procedures, Amerex Corp., Trussville, Alabama)

210. Paragraphs 1 through 209 are realleged and incorporated herein.

211. Based on an audit conducted by McWane, Defendant McWane failed to meet state air quality recordkeeping requirements for the wet paint operation at Amerex Corp, Trussville, Alabama, in violation of 40 C.F.R. § 70.6(b) and ADEM Admin. Code R. 335-3-1-04.

212. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997

through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

TENTH CLAIM FOR RELIEF - CAA

(Failure to Submit Correct Air Quality Annual Report, Amerex Corp., Trussville, Alabama)

213. Paragraphs 1 through 212 are realleged and incorporated herein.

214. Based on an audit conducted by McWane, Defendant McWane submitted two (2) air quality annual reports for the Amerex Corp., Trussville, Alabama facility with the following deficiencies: (a) the annual reports did not reference usage of gallons as applied, in violation of ADEM Admin. Code R. 335-3-104(2) and Alabama Air Permit No. 4-07-0027-8701 (wet paint) conditions 14 and 15, and (b) the annual summary report was not submitted, in violation of ADEM Admin. Code R. 335-3-1-04(2) and Alabama Air Permit No. 4-07-0027-9001 (powder coating) condition 10.

215. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

ELEVENTH CLAIM FOR RELIEF - CAA

(Failure to Obtain Operating Permit, Amerex Corporation, Trussville, Alabama)

216. Paragraphs 1 through 215 are realleged and incorporated herein.

217. Based on an audit conducted by McWane, Defendant McWane at Amerex Corp., Trussville, Alabama facility operated its brazing, welding, and large shell abrasive blasting prior to any permits being issued, in violation of 40 C.F.R. §§ 70.5(a), 70.7 and Alabama Chapter 2.1.1

& 17.2. This facility currently has a Synthetic Minor Operating Permit (SMOP) (Permit No. 4-07-0027-05) that was issued by the Jefferson County Department of Health on January 23, 2009.

218. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

TWELFTH CLAIM FOR RELIEF - CAA

(Failure to Maintain Complete Records, Clow Valve Company, Corona, California)

219. Paragraphs 1 through 218 are realleged and incorporated herein.

220. Based on an audit conducted by McWane, Defendant McWane failed to record daily VOC emissions from the dry paint booth and the wet paint booth at the Clow Valve Company, Corona, California facility, on the respective coating usage charts, in violation of SCAQMD Rule 109 Recordkeeping for VOC Emissions.

221. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the Title V permit that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

THIRTEENTH CLAIM FOR RELIEF - CAA

(Failure to Maintain Records, Clow Valve Company, Oskaloosa, Iowa)

222. Paragraphs 1 through 221 are realleged and incorporated herein.

223. Based on an audit conducted by McWane, Defendant McWane failed at the Clow Valve Company, Oskaloosa, Iowa facility to maintain on-site maintenance records relating to the nature and quantity of materials used at the hydrant and large valve paint booths and other information relating to that equipment, as well as maintenance of the baghouse filters, in violation of Construction Permits CP95-A-127-S1, CP96-A-560-S1, CP94-A-502-S1, respectively. *See also* 567 Iowa Admin. Code 21.1(6) (requirement for maintenance of records) and 567 Iowa Admin. Code 22.3(3) (authority for issuing construction permit).

224. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FOURTEENTH CLAIM FOR RELIEF - CAA

(Failure to Obtain Construction Permits, Clow Valve Co., Oskaloosa, Iowa)

225. Paragraphs 1 through 224 are realleged and incorporated herein.

226. Based on an audit conducted by McWane, Defendant McWane failed at the Clow Valve Company, Oskaloosa, Iowa facility to obtain construction permits for modified sources after triggering PSD review for unpermitted construction activities, including: (a) in 1994, a No-Bake silo was installed without a construction permit; (b) in 1995, an iron grinding facility was renovated without a permit or PSD determination on file; (c) in 1996, an iron didion drum

was installed without a permit or PSD determination on file; (d) in 1999, two additional brass EIFs were installed without construction permit or PSD determination on file; (e) in 2000, the dry-off furnace, curing ovens, alkaline wash and water rinse were installed with construction permits without PSD determination on file, in violation of 40 C.F.R. §§ 51, 52.820, and 567 Iowa Admin. Code 22.1(1). The facility currently operates under permits that were issued on September 26, 2008 by IDNR.

227. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FIFTEENTH CLAIM FOR RELIEF - CAA

(Failure to Track and Evaluate HAP Emissions, Clow Valve Co., Oskaloosa, Iowa)

228. Paragraphs 1 through 227 are realleged and incorporated herein.

229. Based on an audit conducted by McWane, Defendant McWane failed at the Clow Valve Company, Oskaloosa, Iowa facility to evaluate HAPs in the emission calculation to verify whether the proposed construction permit limitations will assure that the emissions levels will be below the major source threshold for MACT. Also, the facility was not tracking the 12-month rolling average quantity of material used for the hydrant paint booth as required by Air Quality Construction Permit No. 95-A-127-S1, in violation of 40 C.F.R. Part 63, Subpart A and B.

230. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January

30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SIXTEENTH CLAIM FOR RELIEF - CAA

(Failure to Obtain Construction Permit, Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa)

231. Paragraphs 1 through 230 are realleged and incorporated herein.

232. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa facility failed to obtain the required construction permit for EP-008A Iron Shotblasting, in violation of CAA § 165, 40 C.F.R. §§ 70.5, 70.7(b), and 567 Iowa Admin. Code 22.1(1). The facility currently operates under permits (Iron Shotblasting Permit No. 06-A-398-S1) that were issued on September 26, 2008, by IDNR.

233. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SEVENTEENTH CLAIM FOR RELIEF - CAA

(Failure to Obtain Construction Permit, Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa)

234. Paragraphs 1 through 233 are realleged and incorporated herein.

235. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa facility failed to obtain the required construction permit for EP-008B Iron Shotblasting, in violation of CAA § 165, 40 C.F.R. §§ 70.5, 70.7(b), and 567 Iowa Admin. Code 22.1(1). The facility currently operates under permits (Iron Shotblasting Permit No. 06-A-399-S1) that were issued on September 26, 2008, by IDNR.

236. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

EIGHTEENTH CLAIM FOR RELIEF - CAA

(Failure to Obtain Construction Permit, Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa)

237. Paragraphs 1 through 236 are realleged and incorporated herein.

238. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa facility failed to obtain the required construction permit for EP-010 Iron Grinding, in violation of CAA § 165, 40 C.F.R. §§ 70.5, 70.7(b), and 567 Iowa Admin. Code 22.1(1). The facility currently operates under permits (Iron Grinding Permit No. 06-A-400-S1) that were issued on September 26, 2008, by IDNR.

239. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

NINETEENTH CLAIM FOR RELIEF - CAA

(Failure to Obtain Construction Permit, Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa)

240. Paragraphs 1 through 239 are realleged and incorporated herein.

241. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa facility failed to obtain the required construction permit for

EP-019A Shell Core Machines, in violation of CAA § 165, 40 C.F.R. §§ 70.5, 70.7(b), and 567 Iowa Admin. Code 22.1(1). The facility currently operates under permits (Shell Core Machines Permit No. 06-A-405-S1) that were issued on September 26, 2008, by IDNR.

242. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

TWENTIETH CLAIM FOR RELIEF - CAA

(Failure to Obtain Construction Permit, Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa)

243. Paragraphs 1 through 242 are realleged and incorporated herein.

244. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa facility failed to obtain the required construction permit for EP-020 No Bake Core Machine, in violation of CAA § 165, 40 C.F.R. §§ 70.5, 70.7(b), and 567 Iowa Admin. Code 22.1(1). The facility currently operates under permits (No Bake Core Machine Permit No. 06-A-406-S1) that were issued on September 26, 2008, by IDNR.

245. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

TWENTY-FIRST CLAIM FOR RELIEF - CAA

(Failure to Obtain Construction Permit, Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa)

246. Paragraphs 1 through 245 are realleged and incorporated herein.

247. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa facility failed to obtain the required construction permit for EP-022A Mold Pouring and Cooling, in violation of CAA § 165, 40 C.F.R. §§ 70.5, 70.7(b), and 567 Iowa Admin. Code 22.1(1). The facility currently operates under permits (Mold Pouring and Cooling Permit No. 06-A-407-S1) that were issued on September 26, 2008, by IDNR.

248. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

TWENTY-SECOND CLAIM FOR RELIEF - CAA

(Failure to Obtain Construction Permit, Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa)

249. Paragraphs 1 through 248 are realleged and incorporated herein.

250. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa facility failed to obtain the required construction permit for EP-022B Mold Pouring and Cooling, in violation of CAA § 165, 40 C.F.R. §§ 70.5, 70.7(b), and 567 Iowa Admin. Code 22.1(1). The facility currently operates under permits (Mold Pouring and Cooling Permit No. 06-A-408-S1) that were issued on September 26, 2008, by IDNR.

251. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that

occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

TWENTY-THIRD CLAIM FOR RELIEF - CAA

(Failure to Obtain Construction Permit, Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa)

252. Paragraphs 1 through 251 are realleged and incorporated herein.

253. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa facility failed to obtain the required construction permit for EP-022C Mold Pouring and Cooling, in violation of CAA § 165, 40 C.F.R. §§ 70.5, 70.7(b), and 567 Iowa Admin. Code 22.1(1). The facility currently operates under permits (Mold Pouring and Cooling Permit No. 06-A-409-S1) that were issued on September 26, 2008, by IDNR.

254. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

TWENTY-FOURTH CLAIM FOR RELIEF - CAA

(Failure to Obtain Construction Permit, Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa)

255. Paragraphs 1 through 254 are realleged and incorporated herein.

256. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve Co. - Iron Foundry, Oskaloosa, Iowa facility failed to obtain the required construction permit for EP-031 Laempe Core Making Machine, in violation of CAA § 165, 40 C.F.R. §§ 70.5, 70.7(b),

and 567 Iowa Admin. Code 22.1(1). The facility currently operates under permits (Laempe Core Making Permit No. 06-A-411-S1) that were issued on September 26, 2008, by IDNR.

257. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

TWENTY-FIFTH CLAIM FOR RELIEF - CAA

(Failure to Obtain Construction Permit, Clow Valve Co. - Machine Shop, Oskaloosa, Iowa)

258. Paragraphs 1 through 257 are realleged and incorporated herein.

259. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve Co. - Machine Shop, Oskaloosa, Iowa facility failed to obtain the required construction permit for EP-013B Large Valve Fuse Coat Oven, in violation of CAA § 165, 40 C.F.R. §§ 70.5, 70.7(b), and 567 Iowa Admin. Code 22.1(1). The facility currently operates under permits (Fuse Coat Oven Permit No. 06-A-383-S1) that were issued on December 6, 2006, by IDNR.

260. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

TWENTY-SIXTH CLAIM FOR RELIEF - CAA

(Failure to Obtain Operating Permit, Clow Valve Co. - Machine Shop, Oskaloosa, Iowa)

261. Paragraphs 1 through 260 are realleged and incorporated herein.

262. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve Co. - Machine Shop, Oskaloosa, Iowa facility failed to apply for a Title V Operating Permit for the facility, in violation of CAA § 165, and 567 Iowa Admin. Code 22.104, 22.105(1), and 22.106(3).

263. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

TWENTY-SEVENTH CLAIM FOR RELIEF - CAA

(Failure to Submit Complete Emissions Inventory, Kennedy Valve Co., Elmira, New York)

264. Paragraphs 1 through 263 are realleged and incorporated herein.

265. Based on an audit conducted by McWane, Defendant McWane at the Kennedy Valve Co., Elmira, New York facility failed to include storage vessels for baghouse dust additives and proposed new diesel fuel tanks in their emissions inventory, in violation of CAA § 50440 C.F.R. § 70.6(b), and 6 New York Codes, Rules and Regulations ("NYCRR") Chapter III, Part 201-6.

266. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997

through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

TWENTY-EIGHTH CLAIM FOR RELIEF - CAA

(Failure to Perform Work Practice Requirement, Kennedy Valve Co., Elmira, New York)

267. Paragraphs 1 through 266 are realleged and incorporated herein.

268. Based on an audit conducted by McWane, Defendant McWane at the Kennedy Valve Co., Elmira, New York facility failed to include written operating procedures for notification of a shutdown or malfunction of an emission control device in the facility operating procedures, in violation CAA § 504, 40 C.F.R. § 70.6(b), and 6 NYCRR Chapter III, Part 201-6.5 (c)(3)(iii).

269. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

TWENTY-NINTH CLAIM FOR RELIEF - CAA

(Failure to Obtain Permit, Kennedy Valve Company, Elmira, New York)

270. Paragraphs 1 through 269 are realleged and incorporated herein.

271. Based on an audit conducted by McWane, Defendant McWane at the Kennedy Valve Co., Elmira, New York facility failed to submit an application for the metal coatings maximum achievable control technology ("MACT") by the applicable deadline for that standard, resulting in a delay of three months and 20 days, in violation of 40 C.F.R. § 63, Subpart EEEE, 40 C.F.R. § 63.2334, 40 C.F.R. § 63.2338, 40 C.F.R. § 63.2342. The facility currently operates

under a Title V Permit (Permit No. 8-0704-00025) that was effective on April 19, 2007, and will expire on April 18, 2012, and was issued by the New York State Department of Environmental Conservation ("NYSDEC").

272. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

THIRTIETH CLAIM FOR RELIEF - CAA

(Failure to Adequately Control Fugitive Dust Emissions, M & H Valve Co., Anniston, Alabama)

273. Paragraphs 1 through 272 are realleged and incorporated herein.

274. Based on an audit conducted by McWane, Defendant McWane at the M & H Valve Co., Anniston, Alabama facility failed to adequately contain fugitive dust emissions, in violation of 40 C.F.R. § 70.6(b) and ADEM Admin. Code R. 334-3-4.02.

275. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

THIRTY-FIRST CLAIM FOR RELIEF - CAA

(Failure to Keep Required Records, M & H Valve Company, Anniston, Alabama)

276. Paragraphs 1 through 275 are realleged and incorporated herein.

277. Based on an audit conducted by McWane, Defendant McWane at the M & H Valve Co., Anniston, Alabama facility failed to keep required records of paints and solvents usage, including VOC content, in violation of 40 C.F.R. § 70.6(b), ADEM Admin. Code 335-3-1-04 and Permit No. 301-006-X019, Item 19.

278. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

THIRTY-SECOND CLAIM FOR RELIEF - CAA

(Failure to Correct Recordkeeping Deficiencies and Failure to Submit the VOC Report Timely, M & H Valve Company, Anniston, Alabama)

279. Paragraphs 1 through 278 are realleged and incorporated herein.

280. Based on an audit conducted by McWane, Defendant McWane at the M & H Valve Co., Anniston, Alabama facility failed to correct recordkeeping deficiencies, including (a) records to demonstrate compliance with the synthetic minor operator permit, in violation of 40 C.F.R. § 70.6(a)(3), ADEM Admin. Code 335-3-1-04 and Permit 301-0006-X004, X022, X024, X026 Condition 13, (b) records to demonstrate compliance with monthly and rolling 12-month total metal melted in violation of 40 C.F.R. § 70.6(a)(3), Permit 301-0006-X026 Condition 13, (c) updating VOC records since approximately January 2004 with new paints purchased in violation of 40 C.F.R. § 70.6(a)(3), Permit 301-0006-X019 Condition 12, (d) triethylamine (TEA) actual hourly and 12 consecutive month period emissions beginning June 9, 2004 in violation of 40 C.F.R. § 70.6(a)(3), Permit 301-0006-X025 Condition 12, (e) operation and maintenance

documentation in violation of Permit 301-0006-X004, X022, X024, X026 Condition 13 and X025 Condition 12, (f) packed bed scrubber records in violation of 40 C.F.R. § 70.6(a)(3), Permit 301-0006-X025 Condition 12, and (g) the VOC report was not submitted by January 10, 2004, in violation of 40 C.F.R. § 70.6(a)(3), Permit 301-0006-X019 Condition 13.

281. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

THIRTY-THIRD CLAIM FOR RELIEF - CAA

(Failure to Conduct Required Air Quality Monitoring, M & H Valve Co., Anniston, Alabama)

282. Paragraphs 1 through 281 are realleged and incorporated herein.

283. Based on an audit conducted by McWane, Defendant McWane at the M & H Valve Co., Anniston, Alabama facility failed to conduct all required air quality monitoring in violation of ADEM Admin. Code R. 335-3-1-.04 (General Monitoring records and reporting), including (a) baghouse hours in violation of 40 C.F.R. § 70.6(b) and Permit 301-0006-X004, X022, X024, X026 Condition 13, (b) packed bed scrubber in violation of 40 C.F.R. § 70.6(b) and Permit 301-0006-X025 Condition 12, (c) pH monitoring on scrubber in violation of 40 C.F.R. § 70.6(b) and Permit 301-0006-X025 Condition 12. The facility currently operates under air permits that were issued between February 2007 and October 2007 by ADEM.

284. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred

before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

THIRTY-FOURTH CLAIM FOR RELIEF - CAA

(Failure to Meet Permit Emission Levels, Manchester Tank Co., Crossville, Tennessee)

285. Paragraphs 1 through 284 are realleged and incorporated herein.

286. Based on an audit conducted by McWane, Defendant McWane at the Manchester Tank Co., Crossville, Tennessee facility failed to meet permit limits for incinerator stack emissions and opacity, caused by the improper burning of plastic liners from power coat containers, in violation of 40 C.F.R. § 70.6(b), and Tennessee Air Pollution Control Rule ("T.A.P.C.R.") 1200-3-5(1).

287. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

THIRTY-FIFTH CLAIM FOR RELIEF - CAA

(Failure to Operate Without a Permit, Manchester Tank Company, Crossville, Tennessee)

288. Paragraphs 1 through 287 are realleged and incorporated herein.

289. Based on an audit conducted by McWane, Defendant McWane at the Manchester Tank Co., Crossville, Tennessee facility failed to obtain permit coverage for the Blue-Surf Furnace air emission source when a change in Tennessee air quality regulations prompted the need for permit coverage, in violation of 40 C.F.R. §§ 70.5(a), 70.7(b), and T.A.P.C.R. 1200-3-9-

.04(d). The facility currently operates under an air permit (Permit No. XX) that was issued on September 26, 2008, by the Tennessee Department of Environmental Quality.

290. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

THIRTY-SIXTH CLAIM FOR RELIEF - CAA

(Failure to Obtain Operating Permit, Manchester Tank Company, Elkhart, Indiana)

291. Paragraphs 1 through 290 are realleged and incorporated herein.

292. Based on an audit conducted by McWane, Defendant McWane at the Manchester Tank Company, Elkhart, Indiana facility failed to obtain an operating permit from at least October 1999 until June 2001, in violation of 326 Ind. Admin. Code 2-1-04. The facility currently operates under a federally enforceable state operating permit (FESOP Permit No. F 039-24288-00115) that was issued on June 11, 2007, and will expire on June 11, 2012, by the Indiana Department of Environmental Management (IDEM).

293. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January

30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

THIRTY-SEVENTH CLAIM FOR RELIEF - CAA

(Failure to Report to State Agency, Manchester Tank Company, Lubbock, Texas)

294. Paragraphs 1 through 293 are realleged and incorporated herein.

295. Based on an audit conducted by McWane, Defendant McWane at the Manchester Tank Company, Lubbock, Texas facility failed to register its surface coating facilities with the Texas Commission on Environmental Quality, in violation of 40 C.F.R. § 70.5(a), and 30 Texas Administrative Code ("T.A.C.") § 106.433. This facility closed on October 26, 2004.

296. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

THIRTY-EIGHTH CLAIM FOR RELIEF - CAA

(Failure to Keep Required Records, Manchester Tank Company, Lubbock, Texas)

297. Paragraphs 1 through 296 are realleged and incorporated herein.

298. Based on an audit conducted by McWane, Defendant McWane at the Manchester Tank Company, Lubbock, Texas facility failed to maintain usage records for the surface coating process, in violation of 40 C.F.R. § 70.6(b), and T.A.C. § 106.433.

299. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of the CAA of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January

30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

THIRTY-NINTH CLAIM FOR RELIEF - CAA

(Failure to Notify State Agency, Manchester Tank Company, Petersburg, Virginia)

300. Paragraphs 1 through 299 are realleged and incorporated herein.

301. Based on an audit conducted by McWane, Defendant McWane at the Manchester Tank Company, Petersburg, Virginia facility failed to register two burners (emission sources) for a bake oven and furnace with the state air pollution control agency, in violation of 40 C.F.R. §§ 70.5(a), 70.6(b), and 9 Va. Admin. Code § 5-80. This facility closed on June 5, 2009.

302. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FORTIETH CLAIM FOR RELIEF - CAA

(Failure to Keep Complete Records, Manchester Tank Company, Petersburg, Virginia)

303. Paragraphs 1 through 302 are realleged and incorporated herein.

304. Based on an audit conducted by McWane, Defendant McWane at the Manchester Tank Company, Petersburg, Virginia facility failed to fully comply with all recordkeeping requirements established by its air quality permits or applicable regulations, including (1) annual records of CO₂ and NO_x emission calculations, in violation of 40 C.F.R. § 70.6(b), Condition 14, 15, and 9 Va. Admin. Code § 5-50-250; (2) calibration records for a differential pressure gauge, in violation of 40 C.F.R. § 70.6(b), Condition 8, 9 Va. Admin. Code § 5-80-10H, 9 Va. Admin.

Code § 5-60-20C, and 9 Va. Admin. Code § 5-50-260; and (3) current spare part inventory lists, in violation of 40 C.F.R. § 70.6(b), and Condition 26, and 9 Va. Admin. Code § 5-20E.

305. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FORTY-FIRST CLAIM FOR RELIEF - CAA

(Failure to Have Comprehensive Permit, Manchester Tank Company, Quincy, Illinois)

306. Paragraphs 1 through 305 are realleged and incorporated herein.

307. Based on an audit conducted by McWane, Defendant McWane's Lifetime Operating Permit at the Manchester Tank Company, Quincy, Illinois facility failed to identify a second powder coat line that had been installed at the facility prior to October 1999 (the month McWane acquired Manchester Tank), and failed to obtain a construction permit or operating permit for this line, in violation of 35 Ill. Admin. Code 201.142, 201.143. The facility currently operates under Lifetime Operating Permit (Permit No. 001806AAW) that was issued on August 13, 2009 by the Illinois Environmental Protection Agency (IEPA).

308. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FORTY-SECOND CLAIM FOR RELIEF - CAA

(Failure to Complete Title V Compliance Certification, Pacific States Cast Iron Pipe Co., Provo, Utah)

309. Paragraphs 1 through 307 are realleged and incorporated herein.

310. Based on an audit conducted by McWane, Defendant McWane at the Pacific States Cast Iron Pipe Co., Provo, Utah facility failed to complete the compliance certification under the facility's Title V permit, in violation of 40 C.F.R. § 70.5(a). The incomplete compliance certification is in violation of R307-415-5a, Permit Applications: Duty to Apply and R307-415-5d, Permit Applications: Certification. The facility submitted the Title V permit renewal application on October 10, 2007, and is currently operating under their previous Title V permit (Permit No. 4900017001) that was issued on April 10, 2003, and expired on December 7, 2007 until the Utah Department of Environmental Quality (UDEQ) issues their new permit.

311. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FORTY-THIRD CLAIM FOR RELIEF - CAA

(Failure to Meet Operational Limitations, Pacific States Cast Iron Pipe Co., Provo, Utah)

312. Paragraphs 1 through 311 are realleged and incorporated herein.

313. Based on an audit conducted by McWane, Defendant McWane at the Pacific States Cast Iron Pipe Co., Provo, Utah facility failed to meet nine operational limitations listed in the SIP and Approval Orders, including: 1) 55 t/hr limit on the cupola was exceeded three times in

2000; 2) 12.5 hrs/day limitation on the cupola operating hours was exceeded three times in 2000; 3) 2,340 hr/year limitation on the casting area operating hours was exceeded in 2000; 4) 2,760 tons/year limitation on the shell sand coating was exceeded in 2000; 5) 1,100 hr/year limitation (per Approval Order) and 600 hr/year limitation (per SIP) on shell sand coating scrubber operating hours was exceeded in 2000; 6) 17 hr/day limitation on cement lining machine operating hours was exceeded 145 times in 2000; 7) 4,000 hrs/year limitation on cement lining machine operating hours was exceeded in 2000; 8) 354 x 10 to 6th scf/yr limitation on natural gas usage was exceeded in 2000; and 9) 1,530 lb/year VOC limitation was exceeded in 2000.

314. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FORTY-FOURTH CLAIM FOR RELIEF - CAA

(Failure to Keep Complete Records, Pacific States Cast Iron Pipe Company, Provo, Utah)

315. Paragraphs 1 through 314 are realleged and incorporated herein.

316. Based on an audit conducted by McWane, Defendant McWane at the Pacific States Cast Iron Pipe Co., Provo, Utah facility failed to keep complete records demonstrating compliance with a fugitive dust plan for 2003 and 2004, in violation of 40 C.F.R. § 70.6(b), and Utah Admin. Code R. 307-309-6.

317. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January

30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FORTY-FIFTH CLAIM FOR RELIEF - CAA

(Failure to Keep Complete Records, Pacific States Cast Iron Pipe Company, Provo, Utah)

318. Paragraphs 1 through 317 are realleged and incorporated herein.

319. Based on an audit conducted by McWane, Defendant McWane at the Pacific States Cast Iron Pipe Co., Provo, Utah facility failed to keep records of daily visual emission opacity inspections, facility-wide, in violation of 40 C.F.R. § 70.6(b), Utah Admin. Code R. 307-401-6(1), and the facility's Permit DAQE-AN0794009-04.

320. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FORTY-SIXTH CLAIM FOR RELIEF - CAA

(Failure to Keep Complete Records, Pacific States Cast Iron Pipe Company, Provo, Utah)

321. Paragraphs 1 through 320 are realleged and incorporated herein.

322. Based on an audit conducted by McWane, Defendant McWane at the Pacific States Cast Iron Pipe Co., Provo, Utah facility failed to have a copy of the Amended Annual Compliance Certification submitted December 22, 2003, available during the audit, in violation of 40 C.F.R. § 70.6(b), and Permit condition I.S.1.a and Utah Admin. Code R. 307-415-6(a)(3)(b)(ii).

323. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FORTY-SEVENTH CLAIM FOR RELIEF - CAA

(Recordkeeping Discrepancy, Tyler Pipe Company, Marshfield, Missouri)

324. Paragraphs 1 through 323 are realleged and incorporated herein.

325. Based on an audit conducted by McWane, Defendant McWane had a recordkeeping error at the Tyler Pipe Company, Marshfield, Missouri facility when it failed to account for 30 lbs of a potentially ozone-depleting chemical when R-22 refrigerant was added to the cooling system. One hundred eighty (180) pounds was charged and the remaining thirty (30)-pound cylinder was on-site but had not been charged, in violation of 40 C.F.R. § 82.166. Tyler Coupling is considered a de minimis facility based on the emissions generated from the facility and under Missouri rule is not required to obtain air/construction permits.

326. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FORTY-EIGHTH CLAIM FOR RELIEF - CAA

(Failure to Have Permit When Operating, Tyler Pipe Company, Macungie, Pennsylvania)

327. Paragraphs 1 through 326 are realleged and incorporated herein.

328. Based on an audit conducted by McWane, Defendant McWane at the Tyler Pipe Company, Macungie, Pennsylvania facility failed to have an air permit when operating and failed to have a current hazardous air pollutant ("HAPs") inventory, in violation of 40 C.F.R. § 70.6(b), and 25 Pa. Code 127.14. This facility closed in April 2006.

329. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FORTY-NINTH CLAIM FOR RELIEF - CAA

(Failure to Submit Complete Title V Permit Application, Tyler Pipe Co., Tyler, Texas)

330. Paragraphs 1 through 329 are realleged and incorporated herein.

331. Based on an audit conducted by McWane, Defendant McWane at the Tyler Pipe Co., Tyler, Texas facility failed to include all required emission sources in the facility's Title V permit application, in violation of 40 C.F.R. § 70.5 and 30 T.A.C. § 122.

332. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of the CAA of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FIFTIETH CLAIM FOR RELIEF - CAA

(Failure to Adequately Monitor Compliance, Tyler Pipe Company, Tyler, Texas)

333. Paragraphs 1 through 332 are realleged and incorporated herein.

334. Based on an audit conducted by McWane, Defendant McWane at the Tyler Pipe Co., Tyler, Texas facility failed to adequately monitor compliance with air emission limits; although the records required by the permits were being kept, no one was reviewing them to determine if any permit limitations had been exceeded, in violation of 40 C.F.R. § 70.6(a)(3) and Title V permit requirement.

335. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FIFTY-FIRST CLAIM FOR RELIEF - CAA

(Failure to Consistently and Adequately Maintain Control Equipment, Tyler Pipe Co., Tyler, Texas)

336. Paragraphs 1 through 335 are realleged and incorporated herein.

337. Based on an audit conducted by McWane, Defendant McWane at the Tyler Pipe Co., Tyler, Texas facility failed to keep the electrostatic precipitator (used to control the Akers Dip Tank emissions) properly repaired and operating to ensure the necessary emission control, in violation of 40 C.F.R. § 70.6 and Title V permit requirement.

338. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that

occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FIFTY-SECOND CLAIM FOR RELIEF - CAA

(Failure to Operate and Maintain Control Equipment, Tyler Pipe Company, Tyler, Texas)

339. Paragraphs 1 through 338 are realleged and incorporated herein.

340. Based on an audit conducted by McWane, Defendant McWane at the Tyler Pipe Co., Tyler, Texas facility failed to maintain high efficiency air filters to ensure proper operation and pollution removal, in violation of 40 C.F.R. § 70.6 and Title V permit requirement.

341. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FIFTY-THIRD CLAIM FOR RELIEF - CAA

(Failure to Perform Work Practice Requirement, Tyler Pipe Company, Tyler, Texas)

342. Paragraphs 1 through 341 are realleged and incorporated herein.

343. Based on an audit conducted by McWane, Defendant McWane at the Tyler Pipe Co., Tyler, Texas facility failed to meet the "freeboard" requirement specified in the Texas permit by rule requirements for three degreaser units, in violation of 40 C.F.R. § 70.6(b), and 30 T.A.C. §§ 106.183, 106.454.

344. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that

occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FIFTY-FOURTH CLAIM FOR RELIEF - CAA

(Failure to Maintain Complete Records, Tyler Pipe Company, Tyler, Texas)

345. Paragraphs 1 through 344 are realleged and incorporated herein.

346. Based on an audit conducted by McWane, Defendant McWane at the Tyler Pipe Co., Tyler, Texas facility failed to meet four air quality recordkeeping requirements, including: (a) sand usage was not being tracked as required by North Plant Permit No. 4246 12/13/93-Special Condition 20; (b) at the North Plant cupola, the permit required the facility to have documentation stating that the maximum ash content and maximum sulfur content of the coke are being met, but the records were missing for July 2004 to December 2004 as required by Permit No. 70403 7/16/04-Special Condition 2; (c) at the South Plant, the inoculation operating permit requires that bags be pre-coded after maintenance, vacuuming and/or replacement but there was no documentation indicating whether or not this was being done as required by Permit No. 4851 amended 7/21/94-Special Condition 8; and (d) at the South Plant, the furnace permit required that a warning device be installed to ensure that no inoculation occurs while the associated baghouse is not operational but no documentation could be located as required by Permit No. 4851 amended 7/21/94-Special Condition 9, in violation of 40 C.F.R. § 70.6.

347. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January

30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FIFTY-FIFTH CLAIM FOR RELIEF - CAA

(Failure to Meet Notification Deadline, Tyler Pipe Company, Tyler, Texas)

348. Paragraphs 1 through 347 are realleged and incorporated herein.

349. Based on an audit conducted by McWane, Defendant McWane at the Tyler Pipe Co., Tyler, Texas facility failed to file a timely notification of major source status with respect to hazardous air pollutants by the required deadline, in violation of 40 C.F.R. § 63 Subpart EEEE, and 40 C.F.R. §§ 63.2334, 63.2338, 63.2342.

350. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FIFTY-SIXTH CLAIM FOR RELIEF - CAA

(Failure to Meet Air Quality Requirements, Tyler Pipe Company, Tyler, Texas)

351. Paragraphs 1 through 352 are realleged and incorporated herein.

352. Based on an audit conducted by McWane, Defendant McWane at the Tyler Pipe Co., Tyler, Texas facility failed to meet two air quality requirements when it submitted disclosures to TCEQ, including: (apparent) failure to meet permit by rule requirements regarding short-term air emission limits for South Plant Laempe L-70 isocure core machine; North Plant equipment spray booth stack height was not elevated 1.5 times the building height and rain protection did not

obstruct vertical flow; and proper records were not maintained for this unit (the unit had been shut down but it was still physically present), in violation of CAA § 113.

353. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations of the CAA that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FIFTY-SEVENTH CLAIM FOR RELIEF - CAA

(Failure to Properly Calculate Air Emissions, Union Foundry Co., Anniston, Alabama)

354. Paragraphs 1 through 353 are realleged and incorporated herein.

355. Based on an audit conducted by McWane, Defendant McWane at the Union Foundry Co., Anniston, Alabama facility submitted a Title V permit application containing eleven (11) deficiencies in the air emissions for distinct sources, including: a) underestimation of fugitive emissions from cupola melting, desulfurization and ductile treatment due to use of unrealistically high baghouse system capture efficiency and use of controlled emissions factors from these operations; b) omission of PM emissions from cooling and pouring operations; c) overestimation of actual PM emissions from various operations by using air permit emission limits rather than using uncontrolled emission factors and control equipment, capture/control efficiencies, or facility-specific source test data; d) mathematical errors in triethylamine emissions from core machines, resulting in underestimates in actual emissions; e) failure to consider building control of fugitive PM emissions; f) overestimation of VOC and xylene emissions from flange shop coating with Chem-Prime 37-77 and omission of methyl isobutyl ketone emissions; g) overestimation of VOC emissions from S-91 coating with cutback asphalt; h) overestimation

of xylene emissions from S-91 coating thinner; l) omission of fugitive PM emissions from solid materials storage and from facility roads; j) use in the Title V application of a binder reduction factor for naphthalene of 0.5 which significantly overstated the factor of 0.0585 for phenolic urethane no-bake binder, resulting in overestimation of naphthalene emissions from air set core making by a factor of 8.5; and k) overestimation of benzene emissions from cupola melting through failure to account for the control efficiency of the afterburner, in violation of 40 C.F.R. § 70.6(b) and ADEM Admin. Code R. 335-3-16-.04 (General Monitoring, records and reporting). The facility currently operates under a Title V permit that was issued on September 21, 2007, and will expire on March 5, 2012.

356. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FIFTY-EIGHTH CLAIM FOR RELIEF - CAA

(Failure to Submit Accurate Operating Air Permit Fee Reports, Union Foundry Co., Anniston, Alabama)

357. Paragraphs 1 through 356 are realleged and incorporated herein.

358. Based on an audit conducted by McWane, Defendant McWane at the Union Foundry Co., Anniston, Alabama facility submitted annual Operating Air Permit Fee Reports with six deficiencies, which address stack emissions from facility control devices and fugitive emissions from various sources, including: a) omission of fugitive PM emissions from process operations in violation of Payment of Fees (ADEM Admin. Code R. 335-1-7-.05(6)); b) omission

of PM emissions from bond and sand storage silo operations in violation of Permit Condition 30;

- c) overestimation of the VOC content of the cutback asphalt used in the paint dip tank;
- d) underestimation of the xylene and ethyl benzene emissions from the usage of coating thinner;
- e) omission of fugitive PM emissions from solid materials storage and from facility roads; and
- f) a typographical error in the sulfur content of the coke used in the cupola in violation of 40 C.F.R. §§ 70.5(a), 70.7(b), and Payment of Fees (ADEM Admin. Code R. 335-1-7-.05(6)).

359. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

FIFTY-NINTH CLAIM FOR RELIEF - CAA

(Failure to Submit Accurate Title V Permit Application, Union Foundry Co., Anniston, Alabama)

360. Paragraphs 1 through 359 are realleged and incorporated herein.

361. Based on an audit conducted by McWane, Defendant McWane at the Union Foundry Co., Anniston, Alabama facility failed to submit written plans required to be developed to correspond with the facility's Title V permit requirements. No written plans were in place for ensuring that capture and control devices were properly operated and maintained and that fugitive emissions were properly managed, in violation of 40 C.F.R. § 70.6(b), General Permit Proviso No. 15 and No. 18, and ADEM Admin. Code. R. 335-3-1-.04.

362. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before

January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring after March 15, 2004.

SIXTIETH CLAIM FOR RELIEF - CAA

**(Failure to Maintain Accurate Title V Permit Records, Union Foundry Co.,
Anniston, Alabama)**

363. Paragraphs 1 through 362 are realleged and incorporated herein.

364. Based on an audit conducted by McWane, Defendant McWane at the Union Foundry Co., Anniston, Alabama facility failed to maintain monthly and 12-month rolling total paint and thinner usage records, in violation of 40 C.F.R. § 70.6.

365. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring after March 15, 2004.

SIXTY-FIRST CLAIM FOR RELIEF - CAA

**(Failure to Meet Air Emissions Requirements for Afterburner, Union Foundry Co.,
Anniston, Alabama)**

366. Paragraphs 1 through 365 are realleged and incorporated herein.

367. Based on an audit conducted by McWane, Defendant McWane at the Union Foundry Co., Anniston, Alabama facility failed to meet air emission requirements for the cupola afterburner of at least 1300 degrees F and a 0.3 second residence time, in violation of 40 C.F.R. § 70.6(b) and ADEM Admin. Code R. 335-3-7-.01 for carbon monoxide emissions.

368. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring after March 15, 2004.

SIXTY-SECOND CLAIM FOR RELIEF - CAA

(Failure to Submit Complete Reports, Union Foundry Co., Anniston, Alabama)

369. Paragraphs 1 through 368 are realleged and incorporated herein.

370. Based on an audit conducted by McWane, Defendant McWane at the Union Foundry Co., Anniston, Alabama facility submitted its annual compliance certification (ACC) and semi-annual deviation report (SADR) with the following deficiencies: 1) ACC for the reporting period of March 6, 2002 to March 5, 2003 was submitted late on October 15, 2003; 2) ACC for the reporting period of March 6, 2003 to May 5, 2004 was not complete; 3) SADR covering March 6, 2002 to September 5, 2002 was submitted late; 4) SADR for period of September 6, 2002 to March 5, 2003 was submitted late; 5) SADR for period March 6, 2003 to September 5, 2003 was submitted late; 6) facility was unable to certify compliance with all state air emission rules because no inventory of all emission points was being maintained and no record of state rule applicability was maintained; 7) compliance determinations for all general permit provisos were not included in the ACC covering March 6, 2002 to March 5, 2003; 8) the following records were missing and were not able to be assessed by auditors: SADR for March 6, 2002 to September 5, 2002; SADR for September 6, 2002 to March 5, 2003; Revised SADR for February 3, 2004; and Revised ACC Test results of February 5, 2004 showing VOC and HAP emissions for past permit EU010, in

violation of 40 C.F.R. § 70.6(b) and ADEM Admin. Code R. 335-3-1-.04 (General Monitoring, records, and reporting).

371. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SIXTY-THIRD CLAIM FOR RELIEF - CAA

(Failure to Maintain Required Records, Union Foundry Company, Anniston, Alabama)

372. Paragraphs 1 through 371 are realleged and incorporated herein.

373. Based on an audit conducted by McWane, Defendant McWane at the Union Foundry Co., Anniston, Alabama facility failed to maintain two types of records required under air regulations, including: (1) records to demonstrate compliance with VOC limits, standards and work practices in the State Rule Chapter 6; and 2) records to demonstrate compliance with PM limits and work practices in State Rule Chapter 4, in violation of the facility's Title V Permit (ADEM Admin. Code R. 335-3-6-.01) Control of Organic Emissions and ADEM Admin. Code chap. 335-3-4 Control of Particulate Emissions.

374. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SIXTY-FOURTH CLAIM FOR RELIEF - CAA

**(Failure to Maintain Records Under Title V Permit, Union Foundry Co.,
Anniston, Alabama)**

375. Paragraphs 1 through 374 are realleged and incorporated herein.

376. Based on an audit conducted by McWane, Defendant McWane at the Union Foundry Co., Anniston, Alabama facility failed to maintain logs of inspections, malfunctions, emergencies, and corrective actions. No written procedures were in place to establish methods for monitoring inspections and maintenance, in violation of 40 C.F.R. § 70.6(b), and the facility's Title V Permit (335-3-16-.07(e) Compliance Certification and 335-3-16.05(c) Monitoring and Recordkeeping Requirements).

377. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SIXTY-FIFTH CLAIM FOR RELIEF - CAA

(Failure to Keep Required Records, Union Foundry Company, Anniston, Alabama)

378. Paragraphs 1 through 377 are realleged and incorporated herein.

379. Based on an audit conducted by McWane, Defendant McWane at the Union Foundry Co., Anniston, Alabama facility failed to have records available demonstrating that the fueling of the gasoline-powered van on-site was being conducted in compliance with applicable regulations regarding emissions of hazardous air pollutants (HAPs) from mobile sources, in violation of 40 C.F.R. Part 80, subpart B.

380. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SIXTY-SIXTH CLAIM FOR RELIEF - CAA

(Failure to Keep Required Records, Union Foundry Company, Anniston, Alabama)

381. Paragraphs 1 through 380 are realleged and incorporated herein.

382. Based on an audit conducted by McWane, Defendant McWane at the Union Foundry Co., Anniston, Alabama facility failed to have available required records regarding CFC-containing units (at least one unit, a chiller, stores greater than 50 lbs CFC-containing refrigerant), in violation of 40 C.F.R. § 82.166(k).

383. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for these violations that occurred before January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SIXTY-SEVENTH CLAIM FOR RELIEF - CWA

(Unpermitted Discharge, Amerex Corporation, Trussville, Alabama)

384. Paragraphs 1 through 383 are realleged and incorporated herein.

385. The General NPDES Permit No. ALG120187 for the Amerex Corporation, Trussville, Alabama facility does not authorize or allow the discharge of any pollutant or wastewater that is not specifically identified in the permit and the Notice of Intent resulting in the

issuance of the said permit. The pollutant Purple K is not specifically identified as a pollutant or parameter authorized to be discharged through any of the fifteen or more outfalls covered under this permit.

386. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility had an unpermitted discharge of Purple K into an unnamed tributary of Little Cahaba River on January 9, 2003, in violation of ADEM Admin. Code. R. chap. 335-6-6.

387. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for violations of the CWA that occurred prior to January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SIXTY-EIGHTH CLAIM FOR RELIEF - CWA

(Failure to Report, Amerex Corporation, Trussville, Alabama)

388. Paragraphs 1 through 387 are realleged and incorporated herein.

389. The General NPDES Permit No. ALG120187 Part I.A for the Amerex Corporation, Trussville, Alabama facility requires monitoring of effluent flow at DSN004/DSN004-1 once a month on an instantaneous basis. Part I.C.1.b of the permit requires Amerex Corporation to submit discharge monitoring reports in accordance with the schedule established in the permit. Monitoring required on a monthly basis is required to be reported on a semiannual basis no later than July 28th and January 28th. Each submittal must report results of all monitoring/testing performed during the six-month period preceding the reporting month.

390. Defendant McWane failed to report the amount of effluent flow discharged into the receiving water through outfall DSN004/DSN004-1 during the month of May 2003 and June 2003,

in violation of the reporting requirements of the General NPDES Permit and ADEM Admin. Code R. chap. 335-6-6.

391. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for violations of the CWA that occurred prior to January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SIXTY-NINTH CLAIM FOR RELIEF - CWA

(Failure to Report, Amerex Corporation, Trussville, Alabama)

392. Paragraphs 1 through 391 are realleged and incorporated herein.

393. Currently, Amerex is operating under its expired State Indirect Discharge Industrial User permit 36-37-00055 until ADEM finalizes its new permit. At all relevant times, Part I.F.1.b. of the permit required submittal of discharge monitoring reports on the forms provided by the permitting authority in accordance with the schedule established in the permit. The reports of more frequently than monthly and monthly testing must be submitted on a monthly basis; the reports of quarterly testing must be submitted on a quarterly basis.

394. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report the following effluent limit exceedences in violation of reporting requirements of the State Indirect Discharge Industrial User Permit(s) and ADEM Admin. Code R chap. 335-6-6:

395. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report flow discharged to the receiving POTW from outfall DSN001s during the months of January through August 2000, and November 2000, and December 2002.

396. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report flow discharged to the receiving POTW from outfall DSN002 during the months of April through December 2004.

397. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report phosphate discharged to the receiving POTW from outfall DSN001s during the months of May, July, August, and November 2000, June and September 2001, and September 2003, and failed to monitor and report phosphate in May 2002.

398. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report phosphate and phosphorous discharged to the receiving POTW from outfall DSN002 during the months April 2004 through December 2004.

399. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report pH discharged to the receiving POTW from outfall DSN001s during the months of July and November 2000, and March, September, and November 2001.

400. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report pH discharged to the receiving POTW from outfall DSN002 during the months April 2004 through December 2004.

401. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report cadmium discharged to the receiving POTW from outfall DSN001s during the months of September 2000, October 2001, and September 2003.

402. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report cadmium discharged to the receiving POTW from outfall DSN001 during the month of June 2004.

403. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report chromium discharged to the receiving POTW from outfall DSN001s during the months of September 2000, October 2001, and September 2003.

404. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report chromium discharged to the receiving POTW from outfall DSN001 during the month of June 2004.

405. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report copper discharged to the receiving POTW from outfall DSN001s during the months of September 2000, September and October 2001, and September 2003.

406. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report copper discharged to the receiving POTW from outfall DSN001 during the month of June 2004.

407. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report cyanide discharged to the receiving POTW from outfall DSN001s during the months of September 2000, October 2001, and April and September 2003.

408. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report cyanide discharged to the receiving POTW from outfall DSN001 during the months of April and May 2004.

409. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report nickel discharged to the receiving POTW from outfall DSN001s during the months of September 2000, October 2001, and September 2003.

410. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report nickel discharged to the receiving POTW from outfall DSN001 during the month of June 2004.

411. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report silver discharged to the receiving POTW from outfall DSN001s during the months of September 2000, October 2001, and September 2003.

412. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report silver discharged to the receiving POTW from outfall DSN001 during the month of June 2004.

413. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report zinc discharged to the receiving POTW from outfall DSN001s during the months of September 2000, October 2001, and September 2003.

414. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report zinc discharged to the receiving POTW from outfall DSN001 during the month of June 2004.

415. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report lead discharged to the receiving POTW from outfall DSN001s during the months of September 2000, October 2001, and September 2003.

416. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report lead discharged to the receiving POTW from outfall DSN001 during the months of April and May 2004.

417. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report total suspended solids discharged to the receiving POTW from outfall DSN001s during the months of November 2000 and May 2002.

418. Defendant McWane at the Amerex Corporation, Trussville, facility failed to report total suspended solids discharged to the receiving POTW from outfall DSN002 during the month of April through December 2004.

419. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report oil and grease discharged to the receiving POTW from outfall DSN001s during the month of November 2000.

420. Defendant McWane at the Amerex Corporation, Trussville, facility failed to report oil and grease discharged to the receiving POTW from outfall DSN002 during the month of April through December 2004.

421. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report biochemical oxygen demand discharged to the receiving POTW from outfall DSN002 during the month of April through December 2004.

422. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report total toxic organics discharged to the receiving POTW from outfall DSN001s during the calendar quarters ending in March, June, September, and December 2000, March, June, September, and December 2001, March, June, September, and December 2002, and March, June, September, and December 2003.

423. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to report total toxic organics discharged to the receiving POTW from outfall DSN001 during the calendar quarters ending in June and September 2004.

424. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility reported late the oil and grease data by 19 days for the June 2002 monitoring period.

425. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility submitted incomplete discharge monitoring reports ("DMRs") during the month of September 2003 for the outfall DSN001s by providing incomplete data on phosphate parameter.

426. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for violations of the CWA that occurred prior to January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SEVENTIETH CLAIM FOR RELIEF - CWA

(Failure to Meet Effluent Limits, Amerex Corporation, Trussville, Alabama)

427. Paragraphs 1 through 426 are realleged and incorporated herein.

428. At all relevant times, Part I.A. of the state indirect discharge industrial user permit 36-37-00055 for the Amerex Corporation, Trussville, Alabama facility established an effluent daily maximum limit of 30 mg/l for phosphate and 20 mg/l monthly average limit for discharge through outfall DSN001s.

429. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility failed to meet the effluent limits specified in state indirect discharge industrial user permit 36-37-00055, in violation of ADEM Admin. Code. R. Chap. 335-6-5.

430. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility exceeded the effluent daily maximum concentration limit of 30 mg/l for phosphate as P for the

effluent discharged to the POTW through outfall DSN001s during August 2001 monitoring period. The reported daily maximum concentration measurement value was 100 mg/l.

431. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility exceeded the effluent monthly average concentration limit of 20 mg/l for phosphate as P for the effluent discharged to the POTW through outfall DSN001s during August 2001 monitoring period. The reported monthly average concentration measurement value was 35.83 mg/l.

432. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility exceeded the effluent daily maximum concentration limit of 0.10 mg/l for lead, total recoverable, for the effluent discharged to the POTW through outfall DSN001 during September 2004 monitoring period. The reported daily maximum concentration measurement value was 0.191 mg/l. The daily maximum concentration limit for lead, total was reportedly exceeded twice (2 times) during the September 2004 monitoring period.

433. Defendant McWane at the Amerex Corporation, Trussville, Alabama facility exceeded the effluent monthly average concentration limit of 0.05 mg/l for lead, total recoverable, for the effluent discharged to the POTW through outfall DSN001 during September 2004 monitoring period. The reported monthly average concentration measurement value was 0.176 mg/l.

434. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for violations of the CWA that occurred prior to January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SEVENTY-FIRST CLAIM FOR RELIEF - CWA

(Failure to Have SPCC Plan, Amerex Corporation, Scotch Plains, New Jersey)

435. Paragraphs 1 through 434 are realleged and incorporated herein.

436. Based on an audit conducted by McWane, Defendant McWane at the Amerex Corporation, Scotch Plains, New Jersey facility failed to have an SPCC Plan in place, in violation of 40 C.F.R. § 112. This facility closed in August 2003.

437. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for violations of the CWA that occurred prior to January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SEVENTY-SECOND CLAIM FOR RELIEF - CWA

(Failure to Comply with SPCC Regulations, Anaco, Corona, California)

438. Paragraphs 1 through 437 are realleged and incorporated herein.

439. Based on an audit conducted by McWane, Defendant McWane at the Anaco, Corona, California facility failed to have an updated aboveground storage container inventory, in violation of applicable SPCC regulations at 40 C.F.R. § 112.7.

440. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for violations of the CWA that occurred prior to January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SEVENTY-THIRD CLAIM FOR RELIEF - CWA

(Failure to Have NPDES Permit, Anaco, Corona, California)

441. Paragraphs 1 through 440 are realleged and incorporated herein.

442. Based on an audit conducted by McWane, Defendant McWane at the Anaco, Corona, California facility failed to have an NPDES permit for storm water discharges, in violation of 40 C.F.R § 122.26(a)(1)(v). This facility is currently covered by the NPDES General Permit (Permit No. CA 000001).

443. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for violations of the CWA that occurred prior to January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SEVENTY-FOURTH CLAIM FOR RELIEF - CWA

(Failure to Comply with SPCC Regulations, Anaco, Corona, California)

444. Paragraphs 1 through 443 are realleged and incorporated herein.

445. Based on an audit conducted by McWane, Defendant McWane at the Anaco, Corona, California facility failed to have an SPCC Plan that met the current requirements of the applicable SPCC regulation, nor was the plan certified, in violation of 40 C.F.R § 112 and Appendix C, Attachment C - II.

446. Pursuant to Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for violations of the CWA that occurred prior to January 30, 1997, \$27,500 per day for each such violation occurring from

January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SEVENTY-FIFTH CLAIM FOR RELIEF - CWA

**(Failure to Comply with Storm Water Permit Regulations, Clow Valve Co.,
Corona, California)**

447. Paragraphs 1 through 446 are realleged and incorporated herein.

448. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve, Corona, California facility failed to fully comply with storm water general permit requirements when it discharged cooling water to the storm sewer system, in violation of 40 C.F.R § 112.26.

449. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Defendant McWane is liable for civil penalties of not more than \$25,000 per day for violations of the CWA that occurred prior to January 30, 1997, \$27,500 per day for each such violation occurring from January 30, 1997 through March 15, 2004, and \$32,500 per day for each such violation occurring from March 15, 2004 through January 11, 2010.

SEVENTY-SIXTH CLAIM FOR RELIEF - CWA

(Failure to Meet Benchmark Concentration Levels, Clow Valve Co., Corona, California)

450. Paragraphs 1 through 449 are realleged and incorporated herein.

451. Based on an audit conducted by McWane, Defendant McWane at the Clow Valve, Corona, California facility failed to meet the benchmark concentration levels authorized by the facility's storm water general permit during sampling on January 11, 2001 for the following parameters: total organic carbon, zinc, nitrate nitrogen, nitrite nitrogen, iron, and aluminum, in violation of 40 C.F.R § 122.26.